

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

claimant

UD1136/2010

Against

EMPLOYER

respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms J. McGovern B.L.

Members: Mr. L. Tobin
Mr P. Trehy

heard this claim at Dublin on 21st October 2011

Representation:

Claimant(s): Ms Bernadette Thornton, Siptu, Membership Information &
Support Centre, Liberty Hall, Dublin 1

Respondent(s): Mr Terry Cummins, IBEC, Irish Printing Federation,
Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Respondent's Case

The financial controller and Company Secretary told the Tribunal that the respondent experienced a significant downturn since June 2008. The respondent addressed the problem in different ways. Prior to examinership an independent report was compiled by shareholders. Shareholders sold assets and the respondent was insolvent. Wages were reduced and short time working was introduced to make the respondent more efficient. Redundancies were implemented in all areas of the organisation over a period of time prior to Christmas. Employees were informed about redundancy selection and that it was based on retention of skills. In the year prior to examinership; seven employees were made redundant. The redundancy monies were paid out of the redundancy fund.

The MD told the Tribunal that the respondent experienced difficulties in trade. It endeavoured to merge with another company and that company ceased business. The respondent ultimately went into interim examinership and was therefore subject to a strict regime and tight time lines in order to have the High Court approve the examinership in due course. Redundancies were implemented subject to LIFO and retention of skills. The first step was to post voluntary redundancies and one employee applied for this. The claimant was a table hand in the binary department and she could not be transferred to another area. EW who worked in the same area as the claimant had less service than the claimant but she had folding skills. Redundancies could not have been avoided.

Given the examinership situation there was no time to train employees. If the respondent did not get a quota of redundancies they faced closure. The claimant was a great employee and she never had an issue with her. The MD was based in the office and she was involved in the selection criteria. The respondent compiled skills together as a management team. The person in charge of the particular areas compiled the skill sets. PC was in charge of the production floor. There was no time to give the claimant upskilling. EW undertook work on matt works and she was doing this for quite some time before examiner ship. The union was very involved and attended meetings during the redundancy process. The claimant accepted her redundancy money and was notified of the reason for the redundancy. An interim examiner was appointed on the 11th March 2010, redundancies occurred on the 16th April 2010. The claimant was not aware of her redundancy prior to the 16th April 2010. She received payment for her notice period.

PC told the Tribunal that he was employed by the respondent for thirty years and he was production manager for seven years. It took six to twelve months to operate the folding machine without assistance. The matt works took six months training, EW undertook work on matt works for twelve months before she could work on her own. Folding operators completed an apprenticeship on the folding machine. The claimant did not do an apprenticeship on the folding machine, she did not have knowledge or training on the folding machine, she was a table hand. Some folders were operated by two people and the folders varied in size. The matt works was a complicated job. Work was downloaded onto a PC, stock had to be re-evaluated compiled and labelled. If EW was on leave Administration section undertook her work.

All employees were informed of redundancy on the same day and all left immediately. EW was the only employee retained with shorter service than the claimant. Another employee D is still an employee in the binary department. D is a labourer and undertakes many different duties; the claimant never drove a forklift. At the time the claimant was made redundant there was no other job for her. When EW was on maternity leave another employee operated the folding machine.

Claimant's Case

The claimant told the Tribunal that she commenced employment with the respondent in 2000. She was a table hand and she undertook work on the folding machine but not on the operating of the machine. She at one time supervised agency workers. She had a great relationship with her employer but it then changed. She told her employer she would not accept a ten per cent cut and she then agreed to accept the pay cut. She was not a shop steward but she spoke on behalf of her colleagues. She was not aware that she could appeal her redundancy.

All her colleagues could be assigned to any job at any time however she did not have

operational skills on the folder. She was never trained on this and it was someone else's job. Her colleague D drove a forklift and she did not drive a forklift. When she did not have work to do she undertook cleaning duties. No one discussed skills with her. She could not recall if she was informed that EW was being retained. She undertook some training in FAS on computers to enable her find a new job. She attended for one interview since her redundancy and applied for various jobs but to date has not been successful in obtaining alternative employment.

Determination

The Tribunal accepts that a valid redundancy situation existed in circumstances where it applied to the High Court to be put into examinership. The Tribunal also accepts that redundancies were selected by way of LIFO with retention of skills. The only real issue was whether the retention of skilled workers over and above LIFO was applied properly. It was accepted in evidence by the claimant that she did not have the same skills as EW. The claimant believes she should have been given the opportunity to train for them. Given the fact that the respondent was engaged in the Court process of examinership the time required to acquire these skills was simply not available. The claimant was selected fairly for dismissal and the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

