

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE - appellant

UD1024/10

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER - respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C. Corcoran B.L.

Members: Mr J. Horan
Ms M. Mulcahy

heard this appeal at Naas on 1st November 2011.

Representation:

Appellant:

Respondent: Mr. Conor O'Toole, Conor O'Toole, Solicitors, Moorefield Business
Centre, Moorefield Road, Newbridge, Co. Kildare

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of the employee (the appellant) appealing against the recommendation of the Rights Commissioner (ref. r-082292-ud-09/JC).

Appellant's Case:

The appellant commenced employment on 17th July 2000. She worked as part of the production team. In July 2011 she was promoted and headed the decoration area.

In October 2005 the Operations Manager (AW) approached her and asked her to move to the internet sales area. She refused to go as her IT skills were not up to standard and she wanted to remain part of the production team.

On 15 December 2005 AW again spoke to her and asked her to help Mrs. O'S with internet sales and orders. She subsequently assumed a role in internet sales. She was sent on a computer course in February 2006. She had other duties as well which included packing, dealing with

complaints, covering reception break times and looking after the shop.

On 17th February 2009 at 4.00 pm she received a letter from the respondent which indicated that they were going to restructure the business.

On 18th February 2009 AW called her into his office. The appellant was told she was being made redundant and asked to sign the necessary redundancy forms and to leave the company immediately. She was not required to work out her notice. She received her redundancy payment. It came as a bolt out of the blue. She was aware that other redundancies occurred in the company. She was not aware of the respondent having any financial difficulties at the time.

She was horrified at the way she was treated after nine year's service with the company. The appellant contended someone else was doing her job. Had she been offered work elsewhere in the company she would have accepted it. No discussion occurred on offering her an alternative role in the company.

Since the termination of the appellant's employment she has updated her computer skills and applied for many positions but only secured work in June 2011.

Respondent's Case:

AW contended that the appellant carried out a difficult job in the decoration area and trained a number of employees in that department. She coped very well when sales peaked. She was promoted to supervisor in July 2001.

In 2005 a decision was made to automate the decorating role and new equipment was purchased.

As progress was being made in internet sales AW discussed and offered the appellant a position in that department. The appellant was a bit apprehensive but AW arranged that she would initially work alongside Mrs. O'S. She accepted the new role on the same salary. The appellant also helped out in other departments.

AW saw internet sales as the way forward. Unfortunately the web sales did not take off and little time was required for this role. The role was only full time around Christmas, Easter and Mother's Day. In January 2009 there was a general downturn in business. Twelve months earlier senior management had taken a 10% pay cut. The respondent tried cost cutting measures.

Within four to five weeks action had to be taken. AW looked at all areas in the company. He couldn't see any other area to which the appellant could be redeployed. A circular issued to all staff on 17th February 2009 and AW met the appellant the next day. He explained to her the financial situation the company had found themselves in and that cutbacks had to be made in areas. He advised her that she was being made redundant and he had the necessary redundancy form for her to sign. He recommended that she think about it as it was a very serious matter. The appellant had nothing to say. The appellant's role was divided up between other employees, and one hour a day is spent doing internet orders.

Determination:

The Tribunal carefully considered the evidence adduced. The Tribunal notes that genuine redundancies occurred in the company but that there was a lack of fair procedures. The appellant was not given the opportunity to appeal the decision to make her redundant. The Tribunal is satisfied that the appellant was unfairly selected for redundancy and her appeal under the Unfair Dismissals Acts, 1977 to 2007 succeeds.

The appellant sought reinstatement. However, having regard to all the circumstances the Tribunal does not consider reinstatement to be the appropriate remedy. The Tribunal varies the Rights Commissioner's recommendation and awards the appellant €15,000.00 under the Unfair Dismissals Acts, 1977 to 2007 which is in addition to the redundancy payment already received by the appellant.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

