

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE –**Claimant**

UD83/2010

against

EMPLOYER - **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr B. O'Carroll
Ms H. Henry

heard this claim at Galway on 23 June
and 25 October 2011

Representation:

Claimant:

Ms Kate Kennedy BL, instructed by Ms Ailbhe Burke,
Pauline O'Reilly & Co. Solicitors, 7 St. Francis Street, Galway

Respondent:

Mr Alastair Purdy, Purdy Fitzgerald Solicitors,
Kiltartan House, Forster Street, Galway

The determination of the Tribunal was as follows:

The claimant worked in the respondent's tile supply business from May 1999. Initially the claimant was employed on the shop floor as part of the sales team. After about a year the claimant left the sales area and took on responsibilities for purchasing and stock management.

During the employment the respondent had up to 18 employees and the claimant, who on occasion went overseas in pursuit of her responsibilities, was involved in the respondent's purchasing 375 containers of tiles in the twelve months to September 2007. This number fell to 300 in 2008, 200 in 2009 and had fallen further to 80 in 2010. This resulted in a consequent reduction in turnover. In September 2008 the claimant reduced her hours, at her own request, to 33.5 per week from her previous full time arrangement.

By the end of 2008 staff numbers had been reduced to twelve including one person whose position was declared redundant some time in December 2008. It is the claimant's position that this redundancy caused her to take issue with the managing director (MD) at a subsequent staff meeting

over the way it was effected and that from this point on her previously good working relationship with MD had become cold to the extent that she rarely, if ever, had personal contact with MD. Her position is that from this point she was subjected to bullying by MD. It is common case that no complaint of bullying was made at any time before the end of the employment.

During the spring of 2009 MD discussed the possibility of the claimant returning to work on the shop floor in sales on two or three occasions and the claimant was not receptive to this idea other than to provide cover at lunchtimes or in the case of holidays or illness. On 12 August 2009 MD approached the claimant towards the end of the day and informed her that her position was being made redundant. There is a conflict of evidence between the parties as to whether MD offered the option of the claimant to work in sales on the shop floor at this point. There is no suggestion that MD offered the claimant the option of reduced hours, a pay cut or alternative office work. The following day MD presented the claimant with a settlement agreement document which the claimant signed despite not having received the independent professional advice that the document stated she had received. The claimant received her redundancy lump sum payment and outstanding monies in respect of minimum notice and holiday pay the following day.

Determination:

The Tribunal is satisfied that a genuine redundancy situation arose within the respondent as a result of adverse trading conditions. The Tribunal heard evidence that the claimant’s redundancy was effected on 12 August 2009. The Tribunal is of the view that in effecting or purportedly effecting a dismissal on the grounds of redundancy the respondent was in breach of fair procedures. There was no prior consultation with the claimant and no alternatives to redundancy were explored. The decision taken was in breach of the respondent’s policy as set out in the company handbook, an extract from which is exhibited in the respondent’s booklet of papers submitted to the Tribunal at the opening of the hearing. The relevant principle as quoted in the handbook “all decisions will take place after consultation with all parties and no arbitrary decisions will be made”. These procedures were clearly violated and the claimant found herself summarily dismissed. Notwithstanding that the claimant signed a document purporting to be a settlement agreement dated 13 August 2009 the claimant’s evidence is that she was unaware of the full legal implications of that document and had not sought independent legal advice prior to signing it. This document was dated 13 August 2009, one day after her dismissal at 5-00pm on 12 August 2009. In these circumstances the Tribunal is of the view that the settlement agreement did not adequately reflect the claimant’s intentions after eleven years’ service. In all the circumstances the Tribunal finds that the dismissal was unfair and awards compensation in the amount of €25,000-00 under the Unfair Dismissals Acts, 1977 to 2007

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)