

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE *claimant*

RP1027/2010

UD761/2010

against

EMPLOYER *respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms J. McGovern B.L.

Members: Mr F. Cunneen  
Mr. P. Woods

heard this claim at Dublin on 27th July 2011 and 14th November 2011

Representation:  
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Claimant(s): Mr. Cian Mahoney BL instructed by Ms. Emma Thunder, John Glynn & Company, Solicitors, Law Chambers, The Village Square, Tallaght, Dublin 24

Respondent(s): Ms. Eugenie Houston BL instructed by Whitney Moore, Solicitors, Wilton Park House, Wilton Place, Dublin 2

The determination of the Tribunal was as follows:-

#### **Respondent's Case**

The MD (RT) told the Tribunal that that the respondent was an entertainment distribution company. The business peaked in 2007 and 2008. It invested in an IT system in 2007, which did not work out and subsequently put the company under pressure. In 2008 following a reduction of 50% in turnover, the shareholders took a 50% cut in remuneration with a reduction of up to 20% for employees and certain employee were made redundant. Eighty were employed at peak and it now employs fifty-two. In May 2009 the director and senior management took a substantial pay cut and no bonus. In January 2010 a series of redundancies were implemented. The principal of Last in First out (LIFO) was used for

redundancies in all departments. The financial director SC was employed with the respondent for eleven years and the operations manager (OM) for sixteen years.

The managing director (RT) gave evidence that on the 11<sup>th</sup> January 2010 the operations manager (OM), who was responsible for the warehouse, was approached by the claimant about the possibility of redundancy. OM then brought this to the attention of the Finance Director on the 12<sup>th</sup> January. On the 5<sup>th</sup> February 2010 the operations manager was approached again on the basis that the claimant and her husband who was employed with the respondent wished to return to Poland. Both OM and SC went to RT's office and discussed the issue of the claimant and her husband and the fact that they wished to be made redundant on the basis that they were going back to Poland. RT was surprised because the job was still there and had to be done. The claimant and her husband were not originally considered for redundancy given LIFO applied; their work was still available and if they left the respondent would have to replace the claimant and her husband. Five employees were made redundant in January 2010.

In cross-examination RT stated that the process regarding redundancy was based on LIFO. The respondent had suffered a major loss year on year. It looked at cost cutting but redundancy was the last resort. It was not the case that both the claimant and her husband were summoned to the office and were informed they were being made redundant. They requested redundancy. He was not aware that the claimant and her husband were actively seeking employment in Ireland. The warehouse was the biggest casualty in redundancy.

The operations manager (OM) gave evidence that he was employed with the respondent for sixteen years. The operations manager told the Tribunal that five employees were made redundant on the 5<sup>th</sup> January 2010 and pay was reduced by ten per cent on the 8<sup>th</sup> January 2010. The claimant requested to speak to him on the 11<sup>th</sup> January 2010 and she told him that she and her husband wanted to be made redundant. He was surprised and asked her if they would get jobs. She told him that both of them intended to return to Poland. He went to speak to the financial director. Again on the 5<sup>th</sup> February the claimant asked him and he went back to the financial director and then went to the managing director. The claimant and her husband had a good relationship with the respondent and they wanted to do right by them.

In cross-examination he stated that businesses were closing down every day and they were surprised by this. He felt it was wrong that they were made redundant and both were replaced. Out of three that were let go no one was re-employed. He told the claimant that she needed to give at least one week's notice so that he could get a replacement. He took notes of the conversation but did not have them with him. He could not recall if she returned as a supervisor after her maternity leave. He was shocked to hear that the first time the claimant and her husband heard of redundancy was at a meeting they were summoned to on the 12<sup>th</sup> February 2010. He was responsible for operations and went through the changes that needed to be implemented. He was informed regarding the number of employees that would be made redundant. The operations department was reduced by three. He acknowledged that the claimant and her husband were made redundant. He had to replace them.

The financial director (SC) told the Tribunal that in January 2010 he looked at all departments to establish what areas employees would be made redundant. Five employees

were made redundant and were informed on the 4<sup>th</sup> January 2010. There was a drop in sales and the respondent had to introduce cuts. Redundancy was implemented on the basis of LIFO. The claimant and her husband were not part of this.

On the 12<sup>th</sup> January 2010 the operations manager informed him that the claimant and her husband had requested redundancy. He had scheduled a meeting with the managing director and told him about the request. They did not take it seriously. The operations manager and the witness went to the MD and they had a discussion and decided to let them both go but they would not leave until they got replacements for them. The claimant and her husband were brought to the office on the 12<sup>th</sup> February 2010 and given their papers and were wished well. The claimant and her husband signed the RP50 and had money transferred into their accounts.

In cross-examination he stated that the general process in redundancy was that he looked at all departments to establish where he could trim down. His involvement was to gather the information on who would be made redundant. He did not question who was to be made redundant. The operations manager would have told him that three employees could be made redundant. They had to select employees who were surplus to requirements. Once the final decision was made he would have dealt with the paper work. He did not seek legal advice regarding redundancy. He was surprised that the 12<sup>th</sup> February was the first time that the claimant and her husband had heard of redundancy, they had requested redundancy. Both the claimant and her husband were very good workers. On reflection he stated that it was not a redundancy situation.

### **Claimant's Case**

The claimant told the Tribunal that she commenced employment with the respondent on the 11<sup>th</sup> September 2006. She was a general operative and she worked in the Invoicing Department. As part of her duties she prepared orders, despatched orders and dealt with orders that were returned. She did the same work as her colleagues. She worked Mondays 9 to 7, Tuesday to Thursday 9 until 6 and on Friday 9 until 5. Overtime was always available.

She stated she could never refuse overtime as she was told that there were people to work these positions and she could go home. She got married in 2007 and was on maternity leave in January 2008. While she was pregnant she was treated well and did not encounter any problems at work. She did not have to carry heavy loads and colleagues undertook the heavy orders. After eighteen months with the respondent she was promoted to supervisor.

When she returned from maternity leave a number of changes had occurred and a number of new employees who she did not know where there. She was transferred to another department and was supposed to receive goods and to order stock. It was four weeks before she commenced these duties. One of her colleagues was unable to receive goods and she replaced him for one hour per day. Her salary was €100.00 to €150.00 more than a general operative rate. Two to three weeks prior to her dismissal a meeting took place and she was informed by management that due to the bad economic climate wages would be reduced by ten per cent. All employees agreed to the pay cut. Between Christmas and the time of her dismissal she did not do any overtime. She wanted to spend time with her baby. Her husband who worked with the respondent did a lot of overtime at this time.

She did not ask her employer to make her redundant on the 5<sup>th</sup> February 2010. She never mentioned redundancy and she did not tell him that she wanted to return home. She did not

want to lose her job as she had a child to support. It was not the case that she was offered another job elsewhere. On the 12<sup>th</sup> February at 4.30p.m she answered the telephone and she was summoned to a meeting upstairs. She could not recall who requested her to attend the meeting. She was informed about the cut in wages and that a number of employees were to be made redundant including her. She was one of the longest serving employees. She was very surprised she was selected as she could replace any employee in the respondent company. She was familiar with the work in all departments. The respondent would not explain to her why she was selected. She was so shocked that she telephoned the respondent on the following Monday. She asked for a reference. She was given two weeks' notice and she did not have to work her notice. She received her redundancy on the Monday. The managing director and financial director were both present and spoke at the meeting. She went to locate her husband who worked in another department but she could not locate him. Her husband was made redundant at the same time as her. She was a very good employee and received a very good reference. She did not want to return to Poland.

The claimant is a chemical engineer and she wanted to find job in line with her education. She knew she had sufficient education to work in a chemical company but in the past would have had a language difficulty that prevented her from securing work in her field in Ireland. She endeavoured to find alternative employment in shops, stores, a laboratory and she did anything to try and get a job. She attended an English course, as she wanted to improve her English. She returned to Poland for Christmas holidays and a family wedding.

In cross-examination she stated that the operations manager told her that if she did not want to work for him she could go and find another job. She was not told about redundancy apart from the meeting, she was told when her wages here reduced by ten per cent that no one was going to lose their job. She disagreed that she asked the operations manager about redundancy on the 11 January 2010. When she commenced employment with the respondent she agreed to do overtime and the operations manager asked her to do more overtime. She did not know why she was selected for redundancy on the 12<sup>th</sup> February 2010. She did not know why the respondent did not ask her to go in January 2010 if they wanted to her to go. She was the first to be made for redundant on the 12<sup>th</sup> February 2010 and then her husband was made redundant.

She disagreed that she reminded the operations manager on the 5<sup>th</sup> February 2011 that she requested redundancy. She did not sell her car or close her bank account. Redundancy was first mooted two weeks before she was made redundant. During her time with the respondent employees were let go and new people employed. She was a chemical engineering graduate and an IT specialist. She did not know why she was selected for redundancy.

### **Determination**

During her employment it appeared that she had a very good working relationship with the employer. The claimant was promoted to a supervisory level and maintained that position until her employment ended. She commented favourably on her treatment during her pregnancy and did not have any complaints. In the circumstances it seems odd that she could be selected for redundancy at all while there was still work available and given the fact that she was a longstanding employee of the respondent

Furthermore, it seems unusual that because the claimant was such a good worker she was not

requested to work her notice to save the respondent replacing her for that period.

She accepted the redundancy without any argument or question even though she gave evidence that she was too shocked to dispute it. This does not correlate with the good working relationship that seemed to exist between the parties.

While a redundancy was implemented the Tribunal has some doubts about the circumstances behind the said redundancy. From the evidence tendered the Tribunal was not convinced that the redundancy process carried out by the respondent opposite a number of employees was particularly consistent. At the same time, it appears from the evidence of the claimant that she accepted the redundancy and the terms offered without protest and this is consistent with the respondent's case. Given all the circumstances and on balance the Tribunal finds that the claimant was not unfairly selected for redundancy and the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

The claimant accepted redundancy and no award is being made under the Redundancy Payments Acts, 1967 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)