

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE

*-claimant*

CASE NO.  
UD822/2010  
RP1115/2010

against  
EMPLOYER

*-respondent*

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr G. Andrews  
Mr T. Kelly

heard this claim at Roscrea on 4th October 2011

#### **Representation:**

Claimant: Brian D Hughes & Co, Solicitors, "Longmall", Slievenamon Road, Thurles,  
Co Tipperary

Respondent: Ms E.J. Walsh B.L. instructed by James J Kelly & Co, Solicitors,  
Templemore, Co. Tipperary

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

The respondent is a family run Newsagent employing 4 full-time and 5-6 part-time staff. The claimant was employed as a sales assistant in 1998. In 2006 the claimant was promoted to senior sales assistant. The claimant's most recent contract is dated March 2008 which included the respondent's grievance and disciplinary procedure. In 2007 business decreased due to a number of national and local factors. There has been a 63% drop in business from 2006 to present.

The manager left in 2008 and was not replaced, the respondent now occupies this role. A number of part-time workers have left and have not been replaced and due to improvement in efficiencies the workload has decreased. The respondent, the assistant manager (MB) and the accountant are the only full-time staff that remain. The claimant's position of senior sales assistant became unsustainable; the respondent could not afford to pay her wages or provide a 39 hour working week.

The respondent had a meeting with the claimant on the 8<sup>th</sup> of June 2009 where he informed her that he could no longer afford her position and offered her reduced working hours at a reduced rate of pay as an alternative to redundancy. The alternative hours were from 4.30 to 9.00pm Monday to Friday; these were the only hours the respondent needed covered.

Due to financial pressure the respondent had a deadline of the 29<sup>th</sup> of June to implement the decision. The claimant left the meeting and returned a few days later with a letter stating that, '*I am not accepting the new situation of reduced hours and pay as outlined at the meeting.*' The respondent was left with no option but to make the position redundant. The part-time workers were students and could cover the hours the claimant refused and the shop operated on the existing skeleton staff during the day.

The redundancy procedure was set in motion; the claimant was given 12 weeks' notice as per her contract but remained on sick leave throughout. The claimant's termination date is the 25<sup>th</sup> of June as that was the date the respondent informed her she was being made redundant. The claimant did not raise any concerns or objections throughout the process and accepted it was a redundancy situation.

### **Claimant's Case**

The claimant was informed on the 8<sup>th</sup> of June that her hours of work and pay were being reduced. The claimant was shocked as she had just returned from annual leave. On consideration the claimant wrote to the respondent refusing the reduced hours and pay, requesting that the status quo remain. The claimant did ask if there was any negotiating on the hours to which the respondent said no, all other hours were covered.

Although the claimant was aware of the downturn in business she had been given no prior notice that redundancy was a possibility. The claimant trained the assistant manager (MB) when she started. As the claimant had longer service she could not understand why she was being made redundant.

The claimant gave evidence of Loss and her attempts to mitigate her Loss.

### **Determination**

Having carefully considered the evidence the Tribunal deduce that the respondent did not exhaust all possible alternatives to redundancy. While alternatives were discussed it appears to the Tribunal that these were not explored fully and no meaningful solutions or alternatives were considered.

It appears to the Tribunal that the claimant did not prove that she made sufficient attempts to secure alternative employment. The claimant gave no documentary evidence of efforts to secure alternative employment.

Balancing these two conditions the Tribunal is of the view that the dismissal was procedurally defective. The Tribunal find that the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and awards the claimant €5,000.00 as compensation.

The claimant received her statutory redundancy payment, consequently the claim under the

Redundancy Payments Acts 1967 to 2007 does not arise and is therefore dismissed.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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