

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD563/2010

Against

EMPLOYER
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this claim at Letterkenny on 12th October 2011 and 12th December 2011

Representation:

Claimant:

Sinead Bradley, Solicitors, Unit 1, Cedarwood House,
Kilmacrennan Road, Letterkenny, Co Donegal

Respondent:

Mr Terry MacNamara, IBEC, 3rd Floor, Pier 1, Quay Street,
Donegal Town, Co Donegal

Claimant's case

The claimant commenced employment with the respondent in November 2002 as a part time Store Assistant. In September 2005 she was promoted to Store Manager of the store in Ballybofey. The respondent owned three stores, one in Ballybofey, another in Letterkenny and a third one in Stranolar. The claimant reported to a Director of the respondent (A.F.) in the Ballybofey store.

The claimant became pregnant in mid 2008 and went on maternity leave from 12th December 2008 to 8th June 2009. After maternity leave the claimant went on Illness Benefit until 24th August 2009. On the 10th August 2009 the claimant informed A.F. by phone that she would be returning to work on 24th August. However the respondent seemed a little reluctant about this and arranged to meet with the claimant in a local hotel on the following day. Present at this meeting were the claimant, A.F. and another director (T.F.).

They informed the claimant that her position was no longer available to her as it was being subsumed into the role of A.F. The claimant was informed that his was due to a downturn in business. As an alternative to redundancy the claimant was offered a job as part time store assistant

at the rate appropriate to that position. The claimant refused this offer. Subsequently the claimant was made redundant on 18th August 2009 and received a redundancy lump sum payment. The claimant agreed, when asked, that three directors of the respondent had individually taken over the roles of managing each of the three stores.

The claimant was asked if she had used the respondent's grievance procedures, which she knew were in place and she replied that she had not thought of that.

The claimant contented that she had been treated unfairly and ought to have been given more notice of the impending redundancy. She expected to return to work on 24th August 2009 and was completely taken aback when this did not happen.

Respondent's case

The respondent's representative made an oral submission on behalf of the respondent to the following effect.

The role of manager in the Ballyboffey store was absorbed by A.F. There was a 21% reduction in income for that store and this action was warranted. Despite the fact that the respondent was accused of being underhanded, the selection of the claimant for redundancy was fair and she was offered alternative employment, albeit at reduced remuneration. The claimant never invoked the respondents grievance procedure.

Determination

Having carefully considered the evidence adduced the Tribunal is satisfied that a genuine redundancy situation existed at the time of the claimant's termination of employment. The claimant was treated disrespectfully by not giving her advance notice of the impending redundancy. However the Tribunal are satisfied that she was not unfairly selected for redundancy and as such was not unfairly dismissed. Therefore the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)