

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE - appellant

UD1680/10

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 R. Maguire, B.L.

Members: Mr. P. Pierce
Mr M. O'Reilly

heard this appeal at Naas on 7th March 2012.

Representation:

Appellant : Mr. Bernard C. Byrne, 128 Newbrook Avenue, Donaghmede,
Dublin 13

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-080818-ud-09/JW).

Appellant's Case:

The appellant commenced employment in September 1997 and was employed as a packing supervisor. She had made a quite unique contribution to the company during her tenure. Shortly before Christmas 2008 the appellant took control of a very large export order and a night time shift was introduced. She managed this night shift on her own. The target was achieved and thus no member of staff had to work during the Christmas break.

It was contended that the appellant's job continued on after she was made redundant in February 2009. Her work was redistributed between managers and team leaders.

On 18th February 2009 the appellant was asked together with two other supervisors to attend a meeting with management. The appellant had not been informed in advance the nature of this meeting. At that meeting the appellant was informed that due to the company's restructuring programme she was being made redundant. This was confirmed in a letter handed to her that day together with an RP50 form for her to sign. She was instantly dismissed and let go in an appalling manner. She was not required to work her notice but payment was made in lieu of her notice entitlement.

The appellant contended that she could have carried out any form of work assigned to her in the company. She had offered views on ways the company could make savings and had even suggested working a four day week. She was robbed of her dignity and expectation.

The appellant received a favourable reference from the company. She only received ten weeks work since her dismissal and has since returned to college.

The Rights Commissioner made a finding and awarded the appellant €15,000.00 and she refused to accept this payment from the respondent.

The appellant wishes to be reinstated to her position.

Respondent's Case:

The company had suffered financially in most recent years. There was a loss of €472,117.00 in 2008. Redundancies had to be implemented and ten employees were made redundant. The company operated on a break even basis in the last year. Work is very seasonal.

The appellant's job was redistributed to a Packing Manager and Team Leaders. They also carry out their own duties.

As the appellant's position no longer exists there is no job to which she can be reinstated. If the appellant was reinstated to the company that would necessitate further redundancies in the company.

The respondent acted on HR advice to implement redundancies. On 1st March 2009 management took a 10% pay cut and bonuses were also cut. The company is only running one packing line and one shift.

The respondent accepts fully that it did not follow correct procedures. The respondent had high regard for the appellant during her tenure. The respondent accepts the Rights Commissioner's findings and a payment of €15,000.00 is still available to the appellant.

Determination:

The Tribunal considered the evidence during the course of the hearing. The respondent accepted that it acted unreasonably on 18th February 2009 when the appellant was informed she was being made redundant and was let go that day.

The appellant sought reinstatement. However, as relationships had broken down between the

respondent and the appellant the Tribunal does not consider reinstatement to be the appropriate remedy.

The Tribunal is satisfied that the appellant was unfairly dismissed and varies the Rights Commissioner's recommendation and awards the appellant €45,000.00 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)