

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.  
UD256/2011

EMPLOYEE *-claimant*

against

EMPLOYER

*-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms J. Mc Govern B.L.  
Members: Mr D. Peakin  
Mr. P. Woods

heard this claim at Dublin on 12th June 2012

#### Representation:

Claimant: In person

Respondent: Mr. Conor B Cahill, Sheehan & Company,  
Solicitors, 1 Clare Street, Dublin 2

#### **Respondent's case:**

The Tribunal heard evidence from the director / operations director of the Respondent. She explained that the core business of the company is to mediate for mortgages and pensions. In 2006 90% of their business was mediating for mortgages and 10% life and pensions. The claimant was employed as a mortgage administrator and was excellent at her job. She was promoted to senior mortgage administrator in 2007. They had employees in three business areas - administration, general administration and sales.

In 2007 the company had 125 employees. Due to the downturn in the economy it now has 20 employees. Due to the downturn it is common knowledge that mortgage lending has been cut considerably by the banks. The company's business now deals 95% to 98% with life and pensions and only 2% with mortgages. Due to these changes staff had to be retrained. The claimant was re-trained as a pensions administrator. In all of the circumstances the company had to make a number of employees redundant but some employees left to go to other employment.

The witness explained that she dealt with the redundancies in the general administration department. The criteria of 'last-in-first-out' was used in each redundancy situation. The 'last in first out' criteria applied separately to each department.

The company made salary cuts of 10% for employees and directors in September 2008. In January 2009 the directors took another 30% cut in salary.

In 2010 it was determined that the company was overstaffed based on the work available. Management looked at all areas to identify where possible cut backs could be made. For example, they shared a building with an estate agent. The company and the estate agents both had two receptionists. They eventually shared one receptionist between them and this was a receptionist that had been working for the estate agent for ten years.

The witness was at a management meeting on 20<sup>th</sup> August 2010. They decided to make the claimant and three other employees from across the business redundant. They met the claimant on 27<sup>th</sup> August 2010 to tell her that she was to be made redundant. They gave the claimant a letter to that effect at the end of the meeting and the claimant was very upset. The claimant was pregnant at the time and she thought that she would be excluded from redundancy because of this. The claimant thought that other people on higher salaries would be chosen before her.

The witness explained that the claimant was selected "100%" on a 'last-in-first-out' basis. The claimant did accept that she was the most recent employee in the general administration department but she felt that she should be excluded because of her pregnancy.

The witness explained why the claimant was not selected for the receptionist position that subsequently became available. This position was only to last a short period of time given the aforementioned estate agent's receptionist would ultimately have the job once the logistics of merging the two receptions were completed. The witness explained that they had no other positions for the claimant. The only position available at that juncture was for a financial advisor but the claimant did not have the qualification for that position.

After the claimant was made redundant the respondent did offer her some work as a relief receptionist and she did work for a number of days in that role covering the receptionists annual leave.

Cross-examination:

The witness was asked by the claimant why she was not given an opportunity to work on reception. She explained that when they took on that receptionist that it was the plan at that stage to be for a few weeks only. The claimant said to the witness that she was "very very busy up until the end" that there was an awful lot of work up to the time she finished. The witness explained that they kept the administration as busy as they could but it was not busy in terms of "new work". Following the redundancy the witness and her colleague shared the administration work.

In answer to questions from the Tribunal the witness explained that the claimant was not

replaced. It was put to the witness that the claimant felt she was selected because of her pregnancy and the witness explained that she genuinely did not have any other options, if she had other options she would have taken them and that the claimant was selected on a last-in-first-out basis.

**Claimant's case:**

The Tribunal heard evidence from the claimant. On the day she was told of her redundancy she was with a client. She was called to a meeting which she attended. She met the director / operations director and her colleague and was told she was being made redundant. She was absolutely devastated. She did not sign the redundancy form on that day as she was upset. She did not think that she could be made redundant as she was pregnant. She asked the director / operations director and her colleague if she could take a pay cut; they told her that they could not keep her on.

She could not understand why she could not work on the reception as she had done it before.

The claimant agreed that the selection criteria for redundancy was the 'last-in-first-out basis' and she agreed that if there was a real redundancy situation she would have been the appropriate person for selection in the general administration department. However she did not agree that there was a real redundancy situation. She believed she was let go because she was pregnant. . .

**Determination:**

Having heard all of the evidence the Tribunal accepts that that a redundancy situation arose in this case. It was a very difficult situation for the employer and the employee. Both witnesses were very genuine. The claimant felt that she should be excluded because of her pregnancy. It must be noted however that the claimant's maternity leave had not commenced. The employer applied a last-in-first-out policy and the claimant was the appropriate person selected in the circumstances. The claim under the Unfair Dismissals Acts 1977 to 2007, must fail.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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