

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.

UD1124/2010

Against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Ryan

Members: Mr P. Pierson
Mr J. Moore

heard this claim at Mullingar on 8th December 2011

Representation:

Claimant: Buckley & Company, Solicitors, 14 St Loman's Terrace,
Mullingar, Co Westmeath

Respondent: Mr. Michael O'Sullivan, HR Advisor, Arra Hrd Limited,
Castlelost West, Rochfortbridge, Co Westmeath

Respondent's Case:

The respondent company operates a veterinary practice as a sole trader.

It is run by two business partners. It was the respondent's case that the claimant had been fairly selected for redundancy.

EF one of the business partners in his evidence stated that the business operated with both partners, 2 assistants, 2 nurses, 2 receptionists a pro-active manager and a testing clerk.

Due to the economic climate things got tight and the nurses and receptionists were put on a 3 day week. One receptionist went on maternity leave and did not return to work. Work resumed to a 5 day working week with the loss of the receptionist. The business hours were until 7pm every evening and it was difficult to keep the role of receptionist going, as she could no longer be able to aid with procedures because of new legislation. Her hours of work would be well in excess of 40 per week.

From a business point of view it made sense to recruit another nurse and allow the nurses to expand their duties and take on the reception role, they could give advice and hours could become interchangeable.

Under cross examination EF stated that it was a difficult decision but when the options were weighed up it was the only way the business could work. It was a business decision that had worked well. A nurse answering the phone could make a call that the receptionist could not. The claimant had not been informed or consulted in advance and had not been asked for her suggestions. When the claimant received her notice she was upset but said that she understood the position. Nobody was aware or involved in the decision to make the post of receptionist redundant except himself and his business partner.

Claimant's Case:

The claimant BN in her evidence began working for the practice in June 2007 and did not have a written contract. She stated that her role involved reception, phone, cleaning, TB testing work, work for practice manager and ordering of stock etc. She helped the office manager with invoicing and went out on occasion for testing. She felt a change in atmosphere in the office knew something was wrong in advance of being told. BN knew nothing of a change in the legislation and after a long day was called into the office. Both business partners were there and told her that the practice was taking on a veterinary nurse and that the role of receptionist was gone. She was shocked and in tears, she couldn't even see the form that she was asked to sign. BN would gladly have went on short time or taken a lesser salary. She has been looking for work since then, she has done a 46 week FAS course but has not been employed since.

Determination:

Having considered the evidence adduced the Tribunal is satisfied that a genuine redundancy situation did exist within the respondent company at the time of termination of the claimant's employment. However there was insufficient evidence adduced to satisfy the Tribunal that any selection criteria was applied to the claimant. The claimant was given no advance warning of the possibility of redundancy and was given no chance to discuss or provide any alternative options.

Accordingly the Tribunal finds that the claimant was unfairly dismissed due to her being unfairly selected for redundancy. The Tribunal awards the claimant €5,000.00 under the Unfair Dismissals Acts, 1977 to 2007. This award is over and above any payment already made to the claimant in respect of a redundancy lump sum.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

