

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE - *claimant*

UD1014/2010

against

MN991/2010

EMPLOYER - *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. Fahy BL

Members: Mr W. O'Carroll  
Ms H. Henry

heard this claim at Galway on 6 February 2012

Representation:

\_\_\_\_\_

Claimant:

Mr John Carr, Rhatigan & Company, Solicitors,  
Liosbaun House, Tuam Road, Galway

Respondent:

Mr John Brennan, IBEC, West Regional Office,  
Ross House, Victoria Place, Galway

### **Respondent's Case**

The managing director (MD) of the respondent company gave evidence that the company supplies hygiene products to various industries and organisations. It is a small company based in the west of Ireland with approximately 500 customers and 4 or 5 employees. MD, as an employee carries out general administration and sales duties. The company employs two fulltime van drivers delivering products to customers. The claimant was hired in 2008 as an office administrator and telesales representative. She was provided with a company van which she used very occasionally to carry out local urgent deliveries. She was office based doing general office and bookkeeping duties.

In early 2009 there was a general tightening of the sales environment and the company began to

experience cash flow difficulties. The company was exceeding its bank overdraft facility and on 8 June 2009 the bank wrote to the company threatening to withdraw the overdraft facility unless the company remained within the terms of the facility. In September 2009 the company accountants wrote to the company stating that the company had become loss making. Wages in the company had increased from 30% to 43% and advertising costs had increased from 3% to 5%. In summary the accountants advised that the company could not sustain the level of losses and expenditure into the future if it intended to remain in business.

MD told the Tribunal that he reviewed the whole situation and made a decision to make the claimant's position redundant. He met with the claimant in October 2009 and explained the situation to her. He told the Tribunal that while the claimant was upset and disappointed at the decision she was not surprised. He gave further evidence that it was not possible to make a van driver redundant as he needed the van drivers to carry out deliveries. After making the claimant's position redundant he re-directed the office phone to his own mobile phone and took the calls himself while out on the road carrying out sales duties. He also took on the other office duties himself and outsourced the book-keeping aspect of the claimant's work to his sister. His sister subsequently left that position and he hired an employee on part-time basis to replace her in carrying out the book-keeping duties. He accepted that the company has hired a number of employees since the claimant was made redundant. However these employees are employed as van drivers and have no office or administration functions. He accepted that the 2008 business year was a good year and the company had a turnover of over €600,000.00. By 2009 the turnover had decreased and his profit margins had significantly reduced. By October 2009 he had no alternative but to make the claimant's position redundant.

### **Claimant's Case**

The claimant gave evidence that she was hired by the respondent company on 11 February 2008. She had previously worked for a company for 9 years where she incurred a lot of travel away from her west of Ireland base. Due to a change in her personal circumstances a job closer to her home was more suitable and accordingly she commenced working for the respondent. While her job description was an office administrator and telesales representative she was involved in every aspect of the business. She worked in the stores each morning organising products for delivery and organising the van driver's routes. In the afternoons she carried out general office administration duties and regularly delivered goods in the company van provided to her. In particular she regularly delivered goods to customers on her way home from work.

She gave further evidence that the company had become very profitable by 2008 and was even more profitable in 2009 as sales increased in 2009. She told the Tribunal that she brought efficiencies to the company and it came as a complete shock to be told that she was to be made redundant. No alternatives were offered to her such as reduced hours or a reduction in salary. She told the Tribunal that she never stated that she was not surprised when told that her position was being made redundant. She accepted that she did not ask about the possibility of working reduced hours or for a reduced salary. She believed the company to be profitable as she inputted the sales and purchases figures and was involved in preparing books to the trial balance stage for the company's accountants. She gave evidence that the company has hired 4 employees since her dismissal. She accepted that these employees were not doing office work and were employed as van drivers carrying out deliveries.

Since her dismissal in November 2009 she was unemployed until January 2010. She

commenced two part-time jobs in January 2010 earning a total of €17,000.00 per annum. She remained in one of these positions until August 2010 and remained in the other position until January 2011. She was unemployed from January 2011 until she commenced a college degree course in September 2011. She continues to do that degree course. Her weekly salary while working for the respondent was €788.23.

### **Determination**

A large part of the claimant's duties revolved around book-keeping, a task that was carried out by MD's sister before the claimant was employed. After the claimant was dismissed MD's sister was, initially, the person who again carried out this task. When, after a short time, his sister ceased to perform this function MD hired a part-time employee to carry out this function. The claimant was also employed, on occasion, on delivery work. More drivers have been hired since she was let go. No evidence was adduced to show where any consideration was given to altering the claimant's duties or reducing her hours of work. For all these reasons the Tribunal is not satisfied that a redundancy situation existed within the respondent. Accordingly, the Tribunal finds that the dismissal was unfair. When considering the award in this case the Tribunal is conscious that, had the claimant remained in the employment her earnings may well have been reduced. In all the circumstances the Tribunal deems an award of €12,000-00 under the Unfair Dismissals Acts, 1977 to 2007 to be just and equitable.

The evidence having shown that the claimant received in excess of her statutory entitlement to notice the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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