

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD562/2010

-claimant

against
EMPLOYER

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr N. Russell
Members: Mr J. Hennessy
Ms S. Kelly

heard this claim at Clonmel on 18th July 2011

Representation:

Claimant: Mr. Martin Corbett, Siptu,
Connolly Hall, Lapp's Quay, Cork

Respondent: Mr. Tim O'Connell, Ibec, Confederation
House, 84/86 Lower Baggot Street, Dublin 2

Respondent's case:

The Tribunal heard evidence from a witness for the respondent. He explained to the Tribunal that the respondent is a security company that supplies support services to clients. Services such as security, reception, cleaning and mail room duties. The claimant worked on a business site of one of their clients where they provided security. They were then asked to take over the mail room duties. The mail room attendant (MRA) takes the post and parcels to the security building where the mail is processed and then distributed. This work is a 39 hour week from Monday to Friday. The claimant was in this post.

The claimant was a very good employee and very punctual and she had not ever received warnings of any type.

In 2009 their client was going through a change in that they were making 100 posts redundant. The client was also taking the MRA post back to be an in house post. The respondent was given one month's notice of this.

They looked at other positions for the claimant for example a post in Waterford which was full time averaging 42 hours per week. The position in Waterford arose as they got a call from a company that needed temporary cover at short notice. They offered this position to the claimant. She and her representative asked if the position could be guaranteed for more than six months and they could not guarantee that. They did not offer it to the claimant as from correspondence she required guarantees.

The MRA post is now done in-house by their client's staff. Their own security staff sorts the mail but is taken by their clients staff. The support services staff area is a separate contract. The receptionist duties that they did ended as there were two reception staff and the client asked them to employ one of their employees on the reception.

The Tribunal heard evidence from the HR co-ordinator. She explained that their client was re-structuring and told them that there was no post position and it was to be made redundant. She wrote to the claimant in this regard. There were other positions that needed to be filled but the position in Limerick they thought it would only be for four or five weeks and it lasted 4 weeks. The position in Waterford lasted one week. The claimant had informed them that she wanted at the least a six month contract and they had nothing available.

In cross-examination the witness explained that the claimant did not do her security licence until 2009. She explained that they certainly would have offered the claimant a position if there was something available. Regarding the receptionist position on the client premises she explained that "historically" there was a woman on the reception for more than twenty years who was made redundant. The client wished her to be retained / re-employed by the respondent so at the clients request they re-hired her and under different conditions. The claimant was a mail room attendant and the receptionist was a receptionist.

As the claimant was at some point a licenced security holder they would have loved to keep her but unfortunately there were no positions. The respondent was very active in trying to look for a position for the claimant.

The Tribunal asked to clarify the claimant's post/duty and the witness agreed that from March 2009 the claimant did some security duties.

Claimant's case:

The Tribunal heard evidence from the claimant. She explained that her function was unique in that she worked in the mail room, as a van driver, as a receptionist and also did security. She also did mobile patrols. She further expanded on her duties to the Tribunal. She worked in Dublin from 2005 to 2007 where she did receptionist duties. Her position at the respondent was unique and varied and she believes her position is still there.

She did ask the HR co-ordinator how long that another role would be for but the HR co-ordinator did not say.

Determination:

The Tribunal is satisfied that the position of the mail room attendant was made redundant. The Tribunal is further satisfied that the claimant procured a PSA licence and had ancillary duties as a security officer.

The nature of the work available for security personnel in the respondent company was by its very nature uncertain and the Tribunal accepts that the respondent club acted reasonably in seeking to re-deploy the claimant in this area. However, the claimant herself introduced an unreasonable condition into her terms for re-deployment, namely in that she be guaranteed six months (6) employment, a position which she appeared to maintain before the Tribunal.

In all of the circumstances, the Determination of the Tribunal is that the claimant was not unfairly dismissed and accordingly her claim under the Unfair Dismissals Acts, 1977 To 2007 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

