

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:  
EMPLOYEE

CASE NO.

UD466/2011

against  
EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr S. Mahon

Members: Mr P. Pierson  
Mr O. Nulty

heard this claim at Longford on 19th January 2012

Representation:

Claimant: Mr Tom Rogers, John J Quinn & Co, Solicitors, Earl Street, Longford

Respondent: Declan Naughton, Organisation Solutions, 15 Ashton, Blessington, Co Wicklow

The determination of the Tribunal was as follows:-

JS for the respondent company gave evidence that he set up a company providing rehabilitation support in 2003. The claimant was already working for a company set up by his wife in 2002. Office resources were shared and at some time in 2006 or 2007 he put her on the books of his company due to a downturn in the business operated by his wife. Her business subsequently went into liquidation and a second girl working who worked in the office was offered and took redundancy.

The claimant remained and JS thought she might grow into a new role with him.

He never had any contract for her as she came to him by de-fault more than anything else.

The claimant did basic clerical work, he asked her to up-skill but she refused.

In 2010 the business had to rationalise, HSE were providing funding and they wanted more for less.

He discussed again with the claimant her need for training and she refused.

JS sent the claimant on mentoring sessions with some clients who were not high demand in order to find out if she had the attributes for type of work but he felt she didn't show any enthusiasm.

In July 2010 he advised the claimant that he was looking at re-organising the company and

in November of that year he advised her that she didn't have the skillset he required and paid her a redundancy package. As a gesture of goodwill he backdated it to her start date with his wife's business. There was a new position advertised and filled. It is a completely different post.

Under cross examination JS said he offered "in the field" mentoring to the claimant. He did not register her for FETAC level 5 training as she didn't have a health care background and he didn't know if she would have the necessary skills. She showed no enthusiasm for the mentoring.

The claimant and the respondent had quite a defensive working relationship.

An issue arose about a letter or letters sent to the office and he questioned everyone about them including the claimant. Asked if he suspected her of sending them he replied "absolutely not".

The claimant's role was subsumed into the new executive role that was generated with the re-organisation. The position was advertised before she left and he had shown her the job description in draft form. She got her redundancy cheque on her day of leaving and made no comment at the time.

### **Claimant's case:**

The claimant CC contended that she was unfairly selected for redundancy. The claimant was employed in a business owned by JS's wife in 2002. Both operated from the same building and she did odd jobs for JS when his business opened in 2003. She never requested a transfer to him and was never offered redundancy from his wife's business when it got into financial trouble.

The atmosphere became horrendous working for husband and wife as JS's wife took over some of the duties in his business. CC had two bosses and she was stuck in the middle, she felt JS picked on her because she was an ally for his wife.

CC stated that she was never asked to up-skill and would have availed of any training.

She did not hear any mention of redundancy until 2 November 2010. JS's wife did say something about moving to another location but that was it.

She saw the proof for the advertisement looking for the new employee only when it came through to her computer.

Under cross examination CC said that while she did mentoring from March 2010 it was only between the hours of 4.30pm and 6pm. She did not see the job description and was not asked to up-skill. At a meeting of 9<sup>th</sup> September there was mention of a move to a different location but no mention of redundancy. She did not apply for the new post as the atmosphere had become unbearable. CC said that she would gladly have taken redundancy had it been offered to her at the time JS's wife's business had closed down. Regarding the issue of the letter she felt that JS thought she had sent it as only her and his wife lived in the location that the letter was sent from.

### **Determination:**

The Tribunal was satisfied that a genuine redundancy existed and that the claimant was not unfairly selected. The respondent endeavoured to up-skill the claimant. The creation of a new position does not prima facie show that the redundancy was not genuine. The Tribunal is satisfied that a new executive position was created and that the claimant was not considered qualified for the position. In the circumstances the Tribunal is of the view that the claimant was not unfairly dismissed or unfairly selected for redundancy.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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