

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE

*-Claimant*

CASE NO.  
UD2421/2010

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  
Mr T. Kelly

heard this claim at Waterford on 2nd August 2012

#### **Representation:**

Claimant: Ms. Deirdre O'Callaghan B.L. instructed by Eoin C Daly Mallon,  
Solicitors, 38 South Mall, Cork

Respondent: Mr Francis W. Hutchinson Jnr, H.D. Keane & Co, Solicitors,  
22 O'Connell Street, Waterford

#### **The determination of the Tribunal was as follows:**

Dismissal as a fact was not in dispute between the parties.

#### Summary of evidence:

The claimant was employed by the respondent since September 2001 until the time her position was selected for redundancy during April 2010.

The respondent began his business in 1988, making repairs to crashed vehicles. Since 1988 the business expanded greatly and relocated to larger premises. The parties agreed that the claimant carried out the role of receptionist for a number of years until she was promoted to a position in accounts in either 2003 or 2004. Between then and 2007 it was the claimant's evidence that she assisted in training any new employees into the position of receptionist. Indeed the claimant also stated that she carried out this role in addition to her accounts role in between vacancies. In 2007, employee O was employed into the position of

receptionist and the claimant assisted in her training.

It was outlined to the Tribunal that the claimant's role was preparing accounts, debt collection and requesting payment from customers and insurance companies. The claimant also prepared the wages and was assisted in this by a qualified accountant who provides consultancy services to the respondent. Both the claimant and the receptionist raised invoices and sent them to the relevant claims handler for payment. It was the claimant's evidence that there was a substantial amount of crossover between the two roles. Indeed they often covered for each other if the other was on leave. The respondent accepted in his evidence that the claimant had experience in all front-of-house duties.

It was the respondent's case that the economic downturn began to affect his business. There was less work and a reduction in turnover. The Tribunal heard evidence from the qualified accountant who provides consultancy service to the respondent. He outlined the reduction in the number of jobs, turnover figures and employee numbers for the years 2007 through to the current year to the Tribunal.

The claimant began maternity leave in March 2009 having trained the receptionist on the accounts position prior to the commencement of her leave. During the time the claimant was on maternity leave the respondent, the consultant and employee O carried out the duties of her position.

It was the respondent's evidence that the claimant was content to return to her position on a three day week after her maternity leave. However, the claimant refuted this in evidence stating that the respondent had informed her that her only option was to return to work on a three day week. In any event the claimant acquiesced and returned to work on a three day week on 28 September 2009.

It was the respondent's evidence that given the continued decrease in turnover he had to examine a number of measures to ensure the survival of the business. As part of this he examined staffing levels and made a decision to make the claimant's position redundant.

On 15 April 2010 the respondent spoke to the claimant and informed her that her position was selected for redundancy. This was very difficult for the respondent as the claimant was a very good employee over the years. During cross-examination the respondent accepted that he had not spoken to the claimant about the issue of redundancy in advance of this meeting but the claimant would have known about the status of the business. The claimant accepted in her evidence that there was pressure to get payments in at that time.

It was the claimant's evidence that at the meeting on 15 April 2010 she asked the respondent if there was any way that she could "go back to reception." The respondent raised the issue that she would have to manage on less money but the claimant told him she would. The respondent in his evidence stated that he did not recall the claimant saying that she was prepared to carry out the role of receptionist. He stated that while the claimant might possibly have been able to perform the role there was a new computer system that the claimant would not have been familiar with. It was the claimant's evidence that the computer system in the office was the same and had not changed. The respondent also stated that the position has developed from typical receptionist duties to a more elevated role but he accepted that the claimant could possibly have carried out the role

At the meeting on 15 April 2010, the claimant also put forward job-sharing as an alternative to her position being made redundant. At first the respondent told her that he thought this could not work. They were both upset and he told her to take the rest of the day off and he would think about what she had put forward over the weekend. The claimant thought there was some hope. However, the following Tuesday it was confirmed to the claimant that her position was redundant and there was no further communication regarding the alternative options she had put forward.

It was the respondent's evidence that he would have considered job-sharing if he had thought it was feasible to halve the role of the claimant in accounts and the role of receptionist but he feared that one day of an overlap between them would not suffice and he believed the business would suffer as a result.

It was the respondent's evidence that the business continues to decline and a number of employees have left of their own accord as they "could see the writing on the wall." This year the respondent was forced to make another employee redundant after 17 years of service. The respondent has since diversified his business by renting out part of the premises. Since the claimant's position was made redundant the respondent, the receptionist and the consultant carry out the duties associated with her role.

The claimant gave evidence pertaining to loss. Since her employment terminated she has secured other employment as a receptionist at a car dealership working five days per week.

### **Determination:**

The Tribunal is satisfied that the sole motivation for the respondent's actions was to ensure that his business survived the downturn; however, in seeking to achieve this laudable objective, he did not treat the claimant fairly.

Firstly, the respondent unilaterally reduced the claimant's work week to three days on her return from maternity leave in circumstances where she was entitled to return to the terms and conditions she had enjoyed prior to her leave. The claimant's acceptance of this change in her terms was evidence of her commitment to her employer's business and her willingness to adapt and be flexible in support of the business.

Secondly, some six months after the claimant's return from maternity leave she was dismissed without any prior warning or consultation.

The Tribunal accepts that the respondent was faced with the challenge of re-organising his business to deal with the economic downturn, however, it is inconceivable to the Tribunal that the claimant, with almost nine years experience in the administration section of the business, could not have made a meaningful contribution to any discussion surrounding the reorganisation or rationalisation of the respondent's administration section.

Indeed, on the day when the claimant was informed that she was being dismissed by reason of redundancy she offered alternatives for consideration to include job sharing and/or a wage reduction.

The Tribunal accepts the claimant's evidence that the respondent undertook to consider these

alternatives and come back to her, however, his subsequent actions and failure to make any personal contact with the claimant suggests to the Tribunal that, having committed to a course of action, the respondent did not give any meaningful consideration to an alternative course of action.

The Tribunal believes that a reasonable employer would (a) have had a period of prior consultation (b) have been open to employee input (c) have considered all reasonable alternatives, (d) have had fair and transparent selection criteria and (e) have applied these evenly. The Tribunal is of the opinion that the respondent failed in this regard. There was no prior consultation. The respondent did not invite nor was he open to employee input. The Tribunal does not accept that the respondent gave any genuine consideration to alternatives to dismissing the claimant.

The respondent indicated that he had applied selection criteria in choosing to dismiss the claimant. The Tribunal was not convinced. Even had such criteria been applied evenly and fairly the Tribunal is not satisfied that this would have identified the claimant as the person to dismiss. Further, no real consideration appears to have been given to her longevity of service and the claimant's wide experience within the administrative section of the business. As a consequence the claimant's dismissal was unfair. The Tribunal awards the claimant the sum of €20,000 under the Unfair Dismissal Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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