

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE  
*-claimant*

CASE NO.  
UD451/2010

against  
EMPLOYER  
*-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan  
Members: Ms J. Winters  
Mr T. Brady

heard this claim at Dublin on 14th July 2011

#### Representation:

Claimant: Mr Barra O'Coilain, John Glynn & Company, Solicitors,  
Law Chambers, The Village Square, Tallaght, Dublin 24

Respondent: Ms Muireann Mc Enery, Peninsula Business Services (Ireland)  
Limited, Unit 3 Ground Floor, Block S, East Point Business Park, Dublin 3

#### **Respondent's case:**

The Tribunal heard evidence from the company director. He explained that the company has a wholesale and retail side of the business. They have four shops in Blanchardstown, Lucan, Tallaght and Swords and employ 80 people. In the last three years they carried out redundancies as redundancies were necessary.

In 2009 the state of the business was bad and there was a 14% drop in business. The company suffered double exposure because the business was based on immigrants, Polish and Lithuanian. In 2009 the company went from making a profit to making a loss.

Since 2008 the company managed to increase the wholesale part of the business. They also introduced expanded credit facilities to their customers. The company dropped their prices and therefore had a lower margin of profit.

Regarding the redundancy matrix the company took account of the length of service, Last-in-first-out (LIFO) and the employee disciplinary record. Also only the employees who were employed in the retail part of the business were considered as the wholesale employee roles were different such as forklift drivers. In total they had 89 employees; the majority

were employed in the wholesale area. The sales assistants were in the retail area of which there were 27 to 28 employees.

The claimant had two verbal warnings and two written warnings and she had been absent for a total of 14 days. She was also late on occasions. Regarding the scoring for selection for redundancy the claimant was given minus 5 points for her 14 days absence. The two verbal and written warnings related to her lateness, transgressions for breaks and regarding stock. Her total score was minus five.

The employees were made aware of impending redundancies on 20<sup>th</sup> November 2009. The company did not replace the staff that they had made redundant; "the whole principle of redundancy is to reduce the wage bill". The company did bring staff from another store; "staff were moved from other stores". No new staff were hired for the Tallaght store. There were 89 staff then and now there are 87. The witness expanded on this by explaining that the wholesale area of the business expanded. No new sales staff were taken on since.

Regarding the redundancy selection matrix and discussions with staff there was no discussions in respect of the matrix with the employees as the company treated it as an internal matter. The company has no HR department; the witness explained that he himself dealt with HR matters.

In cross-examination the witness stated that he was managing the respondent in Ireland for the last eight years. The respondent is an import/distribution business. It supplied some retailers and distributed pre-packed foods. Out of the 89 staff 28 were employed in retail, 8 to ten were office staff and approximately 50 in wholesale. The claimant worked in the delicatessen. He could not transfer the claimant to wholesale as she would have to lift heavy items on pallets and load and unload the pallets. Special training was needed to work in wholesale. The respondent had 4000 types of goods in wholesale. The training usually took three months. A checkers training took three months. Employees were paid for the three months while undergoing training. He did not ask any employees if they wanted to work in wholesale. He did not discuss a reduction in hours. Six employees were made redundant on the floor area.

The witness disagreed that his procedures were flawed. Regarding certain procedures he thought at the time that he could make employees redundant without consultation. He agreed in cross-examination that that he was incorrect. He did not know at the time that he had to explore lesser hours or pay cuts. His solicitor advised him that he had to present it to his employees. The criteria used in implementing redundancies were service and disciplinary.

Arising out of re-examination the witness stated that he was the only person involved in the matter. It was not the respondent's preference to dismiss. He did not have a personal reason or a personal preference to dismiss.

**Claimant's case:**

The claimant told the Tribunal that on 13<sup>th</sup> April 2008 she commenced employment with the respondent in the meat department. After a time she trained as a cashier. She completed training in a very short period of time and she was not paid during that period. She had a day off and when she returned she received a letter of dismissal. It was put to the claimant that the respondent witness said that a matrix was compiled and because of her service and disciplinary record i.e. lateness, sickness, absences she was selected. The claimant explained that she had no warnings, just one letter of warning because she was talking on the phone. She did have sickness as she had a difficulty with her leg. At one time she had a difficulty with her leg but

she still called to open the shop and stayed for one hour. She had not seen the warnings before the day of the hearing. She disagrees with the warnings / warning letters. She did not receive warning letters. She would have accepted a different role if it had been offered to her.

The claimant gave evidence as to her loss.

**Determination:**

The respondent did not consult with the employees regarding the redundancies. The respondent did not ask if any of the employees wished to volunteer for redundancy. The respondent did not ask the retail employees who were selected if they wished to work in the wholesale area, regardless if the training took three months as any employee new to the area would need three months training in any event. The respondent did not consider a reduction in working hours or ask the employees about a reduction in hours.

The claim under the Unfair Dismissals Acts, 1977 To 2007, succeeds. The Tribunal determines that compensation be the most appropriate remedy and awards the claimant the sum of €6,533.33.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

