

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE

- *Claimant 1*

CASE NO.

UD2138/2010

MN2096/2010

EMPLOYEE

- *Claimant 2*

UD2139/2010

MN2097/2010

Against

EMPLOYER

- *Respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr R. Maguire, B.L.

Members: Mr G. Mc Auliffe
Mr S. Mackell

heard this claim at Naas on 4th July 2012

Representation:

Claimant: David Powderly Sol, David Powderly Solicitors, The Square, Kilcock, Co Kildare

Respondent: Niamh Muldoon Sol, Holohan Solicitors, Water-view House, 16 Sundays Well Road, Cork

The determination of the Tribunal was as follows:-

Respondent's Case

The Tribunal heard evidence from PK, the owner of the Respondent company. The company is a play centre which he has operated since 2005. The company began to experience difficulties in 2008/2009/2010 and cost saving measures were made. In 2010 the company's cash flow was

so difficult that the Respondent felt there was no alternative other than to implement redundancies. The respondent assessed independent criteria for all roles within the company and decided that the role of supervisor should be made redundant.

The Respondent told the Tribunal that after consulting with family members from the UK in June 2010 he made the decision to make the supervisor role within the company redundant. He explained the organisation structure within the company consisted of himself as the Managing Director, TF as the General Manager, the two Claimants as the general supervisors and approximately 5 or 6 floor staff. There were a total staff number of 32 when weekend staff were taken into account.

In the day to day operation of the company at least 7 floor staff are required to carry out duties such as manning equipment, supervising children, operating reception, serving food and working in the kitchen. The Respondent felt that the staff numbers were top heavy on the management side because the general manager could incorporate the duties of the supervisors into his role but the supervisors could not carry out the duties of the general manager.

When the Claimant's positions were made redundant the Respondent and the general manager assumed the operation of their duties. He also reduced the number of hours worked by other staff. The Respondent took the decision to make the Claimant's redundant for financial reasons and the decision proved to be effective.

During cross examination the Respondent confirmed that the Claimant's commenced employment as floor staff and progressed to the level of supervisor. As supervisors they continued to carry out the duties of floor staff but took on extra duties relevant to their supervisory position.

The Respondent confirmed that he did not ask the Claimant's for their input when making his decision and there was no other role available for them. He did not consult with them in relation to the proposed redundancies because he felt it was his decision to make. He maintained that there position as supervisors was being made redundant and there were no other vacancies within the company.

Claimant's case

Claimant 1 told the Tribunal that she commenced employment with the Respondent company in 2007. Claimant 1 possessed good English and as a result of this was able to work many different areas within the company, such as reception, serving area, kitchen etc. After a few months working for the Respondent she was offered the role of supervisor. She took on this role but continued to carry out her other duties as a member of the floor staff.

As a supervisor Claimant 1 was responsible for staff, stock, orders, banking, rosters, and opening and closing the business. While carrying out these duties she also worked in the kitchen and on reception along with other members of staff.

In 2009 Claimant 1 helped to train TF, the general manager. He had been hired to help the Claimants in their supervisory roles and they accepted that an Irish person was needed to deal with the council and the bank.

Claimant 1 received a letter from the Respondent and his wife calling her to a meeting in the office where they explained that her job was being made redundant. She was shocked and unsure of what

it meant and refused to sign the relevant forms until she sought some advice. The next day she approached the Respondent and asked if she could revert to her role as floor staff. The Respondent's wife told her that they no longer needed staff.

Claimant 1 told the Tribunal that the Respondent's daughter worked in the company at weekends and was paid in excess of the hours she worked. Claimant 1 did not query this arrangement because she felt it was none of her business and she just wanted to retain her job.

During cross examination Claimant 1 confirmed that it was sometimes difficult to carry out supervisory duties and floor staff duties simultaneously but there were cameras in place that allowed her to do so. Claimant 1 felt that another member of staff with less experience and poor English should have been made redundant in order for her to carry on working with the Respondent company.

Claimant 2 told the Tribunal that she commenced working for the respondent company in November 2006 as a member of the floor staff. She began working in the kitchen and then progressed to the role of supervisor. As a supervisor she continued to carry out her duties as a member of the floor staff but took on extra duties relevant to her supervisory position.

Claimant 2 was a full time member of staff until she went on maternity leave. When she returned she worked part time hours. She received a phone call from the Respondent's wife on a Thursday asking her to meet with her but Claimant 2 was unavailable because she had to attend a doctors appointment. On the same day she received a phone call from Claimant 1 who informed her that she had lost her job. When Claimant 2 attended work the following day she was informed that the company did not need her anymore.

Prior to being informed that she was no longer needed Claimant 2 was unaware that her job was at risk. The Respondent never sought her opinion on alternative jobs within the company. Claimant 2 was also aware of the Respondent's daughter's working hours and how much she was paid for these hours. The Respondent's daughter was in school but received a full time employee's rate of pay. She never queried this with the Respondent.

Claimant 2 signed the relevant forms presented to her by the Respondent but she did not know what she was signing.

During cross examination Claimant 2 confirmed that she received her redundancy form on the Friday and signed it the following Monday.

Both Claimants withdrew their claims under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

Determination

The Tribunal considered all of the submissions made. The Tribunal is not satisfied that the Respondent company discharged the onus on them to show that the dismissal was not unfair. The Respondent did not consider any alternatives to terminating the employment of the claimants. The Respondent did not consider a reduction in the claimants' wages. No consultation took place between the Claimants and the Respondent and, even if there was a redundancy situation that necessitated the termination of employment of certain employees, it was not shown to the satisfaction of the Tribunal that the Claimants were fairly selected for redundancy.

Based on the evidence of the Claimants and the Respondent at the Hearing, the Tribunal finds that both Claimants were dismissed unfairly by the Respondent company. On the basis of the evidence as to the loss occasioned by the Claimants, and as Claimant 2 obtained employment soon after the termination, the Tribunal awards Claimant 1 EUR 12,500 and Claimant 2 EUR 844 under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)