

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD192/2011

Against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. R. Maguire, B.L.

Members: Mr. J. Goulding
Mr. F. Keogh

heard this claim at Dublin on 3rd May 2012

Representation:

Claimant:

Mr Paul Stack, P & G Stack, Solicitors, Main Street, Maynooth, Co Kildare

Respondent:

Ms Linda Hynes, Leman, Solicitors, 8-34 Percy Place, Dublin 4

Respondent's case:

The only witness for the respondent was President of the organisation. This is a voluntary role and this witness was not the person who selected the claimant for redundancy or informed her of the decision. The person who made the decision to select the claimant for redundancy reported to the Board of Management, of which the witness was a member. This person advised the Board that he had taken legal advice in relation to the claimant's redundancy, that he had consulted with the claimant on the matter and that he had advised her of up-coming position as Regional Organiser. However, the witness stated that "it turns out that the legal advice received was on the basis of information provided to them and not being provided with some other information, this has become apparent since".

The witness stated that there were on-going cuts to the budget and that as it was a voluntary

organisation they were just keeping their head above water. The respondent accepted that there may have been flaws in the selection process but that nonetheless a redundancy situation existed and the claimant has not been replaced. There are now 7 paid employees whereas there were 5 when the claimant was let go but none of the newer employees are engaged in the claimant's old job.

Claimant's case:

The claimant commenced employment with the respondent on 3rd May 2005 and was made redundant on 28th September 2010. She was on maternity leave from the end of 2008 to 20th April 2009 and following that she took one year's leave without pay with the consent of the respondent. Prior to the expiration of this leave the claimant applied for a further one year but this was rejected and the claimant returned to work on 30th September 2009. However on her return to work she was told that her job no longer existed and she was made redundant.

The claimant had moved back to Ireland from the UK in order to re-commence employment and was shocked at the news that her job was now redundant. There was no prior consultation to the redundancy and she was not offered any alternative employment. The claimant maintained that her job was now being done by the person who filled in for her during her maternity and special leave. She therefore contended that a redundancy situation did not exist and that she was unfairly dismissed from her employment with the respondent.

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 company was not prepared to stand over the procedure employed, but contended that despite any shortcomings in such procedure, there was a redundancy situation in relation to the position of the Claimant.

No supporting documentation of a financial nature was adduced to support the contention that the company needed to make this redundancy in 2010. The company chose not to show any minutes of decisions made by the Board of Directors, whether redacted or not, from the relevant period or indeed any period. There was absolutely no supporting documentation to show that the company acted reasonably. The directors of the company did not appear to be informed, nor to inform themselves, of the decisions taken in relation to the employees of the company.

Even if there was a redundancy situation and the company needed to reduce the number of staff, there was no evidence to show that the Claimant was selected fairly for such redundancy. There was no evidence of any process to select which employee or employees would be made redundant, let alone any participation by employees in that process.

In the circumstances the Tribunal finds that the Claimant was unfairly dismissed. The Claimant's agreed gross salary was € 832.00 per week. Since being terminated in her employment, the Claimant was not available for six weeks at the time of the birth of her second baby but the uncontroverted evidence was that she was available for work otherwise. She earned a total of STG £6,900.00 since her employment was terminated, which approximates to €8,500.00. The Tribunal is satisfied that she made very considerable efforts to mitigate her loss in terms of salary, and is satisfied that her loss is continuing and is likely to

continue into the future. The Tribunal therefore awards the Claimant €65,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

It should be noted that this award takes account of and is over and above any amount already paid to the claimant in respect of a redundancy lump sum.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)