

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE -*Claimant*

CASE NO.

UD1900/2010

against  
EMPLOYER -*Respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr R. Maguire, B.L.

Members: Mr J. Hennessy  
Mr A. Butler

heard this claim at Wexford on 8th June 2012

#### **Representation:**

Claimant: In Person

Respondent: Byrne Wallace, Solicitors, 2 Grand Canal Square, Dublin 2

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

Dismissal as a fact was not in dispute.

#### Summary of evidence:

The Tribunal heard evidence from the Managing Director, a company director and the claimant.

The respondent company operates a number of bus services. However, when the company initially began in 1996 it provided only a local service. The claimant stated that she was the third longest serving employee yet the only employee whose position was selected for redundancy. She had administrative and managerial experience and extensive transport experience as well as a bus license.

The claimant began her employment as a driver. However, over time and following a break in employment, the claimant began an office role with administrative duties such as completing rotas, managing the drivers and other paperwork. Over time, the number of routes expanded to include a number of airport services from 2007. It was in or around this time that a director of the company also began to work in the office. There was a dispute between the parties in

relation to how many hours this director worked in the office. The director gave evidence that she was in the office every day but also worked at home. Her duties were those of more senior management issues such as financing etcetera.

The claimant failed to return to her employment after a period of annual leave in 2007. The directors contacted the claimant and she told them that she felt that she was not required within the company since the director had started working in the business. Following a meeting about this issue, a letter of comfort was issued to the claimant. Dated 3 September 2007 this letter outlined the claimant's responsibilities in an effort to resolve the issues and the claimant returned to work.

Due to the increase in bus routes etcetera the respondent company experienced an increase in revenue during 2008 and 2009. However, the business was impacted by the fact that another bus company also started an airport route. The business was further impacted by extremely bad weather in January 2010 and the closure of airports due to volcanic ash cloud. That year business failed to improve in the spring.

In March 2010 there was an issue about a large increase in the cost of the company's telephone bill. The Managing Director had a discussion with the claimant about the bill. The discussion became heated and the claimant became upset. The Managing Director asked the claimant if the telephone calls were of a personal or work nature and the claimant replied that she was constantly being bullied by the other director and the Managing Director was also now bullying her. The claimant accepted in evidence that during this conversation she had accused the Managing Director of wanting to make her redundant.

The claimant left the office following this conversation. The directors subsequently met the claimant to discuss the issue. The claimant raised the issue that she was not wanted in the business, which was untrue. For the second time they reassured the claimant in an effort to return her to her position, as she was a valued member of staff. In any event the claimant returned to work after this discussion.

However, the financial situation of the company was not improving. One person was employed on a temporary contract to cover afternoons 2.30 to 7.30pm. In an effort to reduce costs the Managing Director asked the claimant if she would be willing to work these hours instead but the claimant told him this did not suit. The Managing Director also asked the claimant if she would consider an alternative role such as driving, a role which she had previously carried out. It was the Managing Director's evidence that the claimant told him that she would prefer to be made redundant. The claimant in evidence refuted this and stated that the Managing Director was the first to raise the issue of redundancy in January 2010. However, the Managing Director did not recall this.

By the end of May 2010 the company had little working capital. Profit and loss accounts for 2008, 2009 and to year ending March 2010 were opened to the Tribunal. The year end accounts for 2010 showed that the company had lost money for the first time. The Managing Director gave evidence that all of the vehicles purchased by the company had a personal guarantee attached to them and he was deeply concerned and worried. The directors considered the matter and how they could resolve costs. A decision was reached during June 2010 to make the claimant's position redundant.

The Managing Director met with the claimant in July 2010 and explained the situation to her

and that the company would have to consider the option of redundancy, which she had raised on two previous occasions. The claimant was annoyed but understood. The claimant did ask if the other employee who was on a temporary contract would also be made redundant. The Managing Director confirmed to the claimant that the offer of these hours was available to her, as there was still a requirement to have the evening hours covered. It was the Managing Director's evidence that the claimant refused this alternative. After the employee with the temporary contract left the employment in September 2010, a new employee was brought in to cover the evening hours which the claimant had refused.

It was the claimant's case that there was no alternative offered to her either verbally or in writing. She stated that she had always been flexible and would have been in this instance had alternatives been offered to her but reiterated that no such alternatives were offered. It was the claimant's case that she was told by the Managing Director that her hours would suit the other director.

The director of the company gave evidence that prior to the claimant's redundancy the director's duties had entailed analysing customer numbers, performing cash reconciliation and defining company objectives. This director had to assume the claimant's duties after the redundancy. The temporary employee continued to work his usual hours but he started to assist with the reconciliation of cash and other duties.

When they met the claimant regarding the redundancy a letter was provided detailing the terms of redundancy and that alternative hours had been offered. The claimant refused to sign the letter as she stated that it was untrue that alternatives were offered. The director stated that the offer was again put to the claimant at the meeting but she declined to accept it. The claimant gave evidence pertaining to loss.

During cross-examination it was put to the Managing Director that the company made purchases in or around the time that the claimant was made redundant, and that the more appropriate accounts to be considered were to year end March 2011. The reason for this was that the busiest time for the company was from September onwards. The Managing Director accepted there was a certain upswing due to the student market at that time of year but there were no extra routes- except perhaps a "helper" bus.

Following a fatal collision in October 2010 the respondent employed a Transport Manager. Due to other commitments the Managing Director is not as available as he was to the company. The Transport Manager has the relevant qualification for this role; the company had offered to support the claimant in gaining this qualification during her employment but she had not taken up this offer.

### **Determination:**

The Tribunal finds that the company was entitled to re-structure and had assured the Claimant on two previous occasions that there would be a job for her. The Tribunal accepts that the company revenues did decrease, and that the claimant's role was subsumed into other roles in the company. The Tribunal also accepts that a reasonable alternative was offered to the Claimant, in terms of alternative hours, though this was not offered in writing as is prescribed in the legislation. In any event, the Tribunal is satisfied that a genuine redundancy situation existed, in that it was decided to do the same work but with less

employees under section 7(2)(c) of the Redundancy Payments Act 1967 as amended, and that there was a fair selection in circumstances where the redundancy of the post should come from administration rather than from driving staff, so as to not affect the income of the company. The Tribunal is also satisfied that it was reasonable not to select the other Director in administration, being the wife of the Managing Director, for redundancy, in circumstances where this was a small, family-financed company where the Managing Director was working increasingly outside the company. The claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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