

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD284/2011

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. C. Corcoran BL

Members: Mr. M. Noone
Mr. J. Dorney

heard this claim at Dublin on 5 June 2012 and 27-28 August 2012

Representation:

Claimant(s):

Mr Michael Landers, Impact,
Nerneys Court, Off Temple Street, Dublin 1

Respondent(s):

Mr. Thomas Hogan BL and Ms. Lorna Lynch BL instructed by
Philip Lee, Solicitors, 7- 8 Wilton Terrace, Dublin 2

The determination of the Tribunal was as follows:-

An unfair dismissal claim was brought on behalf of the claimant in respect of employment with the respondent from 1 October 2001, which culminated on the position of Chief Executive Officer, (CEO) with the respondent company. The claim, stamped as having been received by the Tribunal on 31 December 2010, stated that the claimant had received notice of dismissal on 21 June 2010 and that her employment had ended on 16 August 2010.

It was alleged that the respondent gallery and studios (hereafter referred to as the respondent) that the respondent had contrived a sham redundancy, that the claimant had been unfairly selected for redundancy, that fair procedure had not been followed in the period following the

announcement of redundancies and that the claimant had not been offered suitable alternative employment.

It was further alleged that the claimant was not fully consulted or allowed to have a meaningful role in the re-structuring of the respondent company which was deemed necessary after the Arts Council reduced its annual funding to the respondent company by 35%. It was further submitted that the claimant had not been permitted to serve out her notice period in the workplace and that she had been instructed to "leave the building" by the respondent when she presented at the workplace on 22 June 2010 (the day after receipt of redundancy notice) to attend to company business.

It was also submitted that the new position of "Studio Development Officer" contained almost the same duties and obligations as that of the previous position of CEO.

In its defence the respondent raised a preliminary objection stating that the unfair dismissal claim was statute-barred because it had not been lodged within six months of the date of the relevant dismissal (21 June 2010) in accordance with the provisions of S.8(2) of the Unfair Dismissals Act, 1977.

Further, it was denied that the respondent had contrived a sham redundancy but, rather, it was contended that the claimant's employment had been terminated fairly on grounds of redundancy. The defence continued as follows:

The respondent is an organisation which relies heavily upon public funding. As a consequence of a significant reduction in that funding, the respondent was forced to embark on a process of reorganising its administrative staff. This process was carried out in consultation with staff and necessitated a reduction in the number of administrative positions from five to three with newly defined roles. The claimant was invited and put herself forward for interview for a new position before an independent interview panel specially convened by the respondent but was ultimately not successful in obtaining a position. In all of the circumstances, the claimant was not unfairly selected for redundancy.

It is denied that the respondent failed to follow fair procedures as alleged or at all.

The respondent was not in a position to offer the claimant suitable alternative employment.

The respondent fully and fairly considered all alternatives to redundancy.

The claimant's allegation that she was "...not permitted to serve out her notice period in the workplace..." is not relevant in the context of an application for unfair dismissal. Without prejudice to the foregoing, the claimant was not required to work out her notice and was paid in lieu thereof.

The respondent notes the allegation that the claimant was "...instructed to 'leave the building' by her employer when she attended the workplace. on June 22nd (to attend to company business) one day after receipt of redundancy notice...". As set out above the claimant was not required to work out her notice. However, the claimant refused to accept this decision.

Counsel for the respondent relied on Section 7/(2) (c) of the Redundancy Payments Act 1967 as amended, i.e. "an employee who is dismissed shall be taken to be dismissed by reason of redundancy if (for one or more reasons not related to the employee concerned) the dismissal

is attributable wholly or mainly – to the fact that his employer has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employee has been employed (or has been doing before his dismissal) to be done by other employees or otherwise.”.

For the reasons set out above, the respondent denies that the claimant was unfairly dismissed.

Determination:

On the preliminary issue as to whether the unfair dismissal claim was lodged with the Tribunal within six months of termination, the Tribunal finds the date of termination to have been the last date of the claimant's paid notice period. Therefore, the Tribunal finds the claim to have been brought within the six month period stipulated by the Unfair Dismissals Act of 1977.

On the substantive question as to whether the claimant was unfairly dismissed, the claimant heard days of witness testimony and had sight of voluminous documentation furnished by both sides. It is the unanimous finding of the Tribunal that the claimant's redundancy was, as alleged on behalf of the claimant, a sham redundancy and that she was, in fact, unfairly dismissed within the meaning of the Unfair Dismissals Acts, 1977 to 2007, and that as existing CEO in the company at the time, she was not fully consulted or allowed to be involved in any meaningful way in the re-structuring plans for the company.

The Tribunal noted that the obligations and duties contained in the new position of “Studio Development Officer” were practically the same as that of the CEO – the position the claimant previously held, and that in fact the CEO position still existed albeit under a new name or title.

The Tribunal cites with approval the following sentiments from the case of “St. Ledger V Frontline Distributors Ireland Limited 1995 ELR” - namely that the statutory definition of Redundancy has two important characteristics, namely “impersonality” and “change” - The Tribunal felt that such characteristics were lacking in this case.

In all the circumstances of the case, the Tribunal deems compensation to be the most appropriate redress to award in allowing the claim under the Unfair Dismissals Acts, 1977 to 2007. In the circumstances the Tribunal awards the claimant the sum of €30,000.00 (thirty thousand euro) under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)