

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

claimant

UD267/2011

Against

EMPLOYER

respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr R. Murphy
Ms. E. Brezina

heard this claim at Dublin on 16th October 2012

Representation:

Claimant(s): Ms. Fiona Gallagher BL instructed by Mr Gerard Rowley, Daniel J Reilly & Co, Solicitors, Emmet Street, Trim, Co Meath

Respondent(s): No attendance by or on behalf of the respondent

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant told the Tribunal that she commenced employment with the respondent on the 23rd July 2008 as a sales assistant. Problems started when her line manager commenced and prior to that she did not encounter problems in work. Her manager blamed her for things that she did not do. She was told by her manager that she was two minutes late even though she reported for work on time. Her manager told her to come to work earlier. Fifteen minutes were deducted from her payroll for her break and she was informed that she was not entitled to this. She told her manager that it was the employees' privilege that they get a fifteen minute break. Her manager was not happy about this as the claimant was right.

She was promoted to supervisor. She relayed an occasion when she asked a sales assistant to undertake a task and she shouted at the claimant in an aggressive manner. She went to her manager to report this incident. Two to three days later she attended a meeting with her manager to discuss this matter and her manager asked the claimant to give her version first. However, when the claimant started to talk she was interrupted and her manager jokingly told her that she was a super woman.

She received a letter dated 29th May 2010 from her manager inviting her to a disciplinary hearing on the 2nd June 2010 and the reason given for this was poor performance. No disciplinary action was taken as a result of this meeting. After the meeting she made a formal complaint about an employee who was aggressive to her. She lodged a formal complaint about her manager and the outcome of this was that they would all have to work to improve the situation and create a satisfactory working environment.

After that she did not have any difficulties in work. In July 2010 she was on annual leave. After she returned from holidays she spoke to the area manager as her mother was ill in Poland and she would have to take some time off to take care of her. The area manager did not have a difficulty with this.

She received a letter dated the 31st July 2010 from the area manager requesting her to attend a meeting to discuss her position and that was the first occasion she heard about redundancy. She realised that her job was at risk. At the meeting she asked if it were possible to reduce her hours and if she could revert to being a sales assistant.

She received a letter dated the 3rd August 2010 from the area manager and she was informed that she was being selected for redundancy. She was not given a reason as to why she was selected. She appealed the redundancy and attended a meeting on the 12th August 2010 and she did not have a representative with her. By letter dated 16th August 2010 she was informed that her appeal was unsuccessful.

A manager and four employees worked in her area and she was the longest serving employee. She heard after she was made redundant two employees were taken on but the Tribunal notes that no evidence was given to support this. She received a redundancy lump sum payment.

After she was made redundant she found alternative part time employment on the 21st September 2010 at a lower rate than her salary with the respondent. She remained in this position until the 22 September 2011. She obtained further employment on the 25th November 2011.

Determination

Having considered the uncontested evidence the Tribunal is not satisfied that the respondent acted fairly and reasonably when addressing the need to reduce the number of employees. Where an employer is making an employee(s) redundant, while retaining other employees, the selection criteria being used should be objectively applied in a fair manner. While there are no hard and fast rules as to what constitutes the criteria to be adopted nevertheless the criteria adopted will come under close scrutiny if an employee claims that he/she was unfairly selected for redundancy. The employer must follow the agreed procedure when making the selection. Where there is no agreed procedure in relation to selection for redundancy, as in this case, then

the employer must act fairly and reasonably.

The Tribunal does not accept that the Respondent acted fairly and reasonably in this case for the following reasons:

1. there was no serious or worthwhile consultation with the claimant prior to making her position redundant. She was notified by letter, dated the 31st July 2010, to attend a meeting on the 3rd of August 2010. Four days notification of such an important meeting is not fair or reasonable and did not afford the claimant sufficient time to prepare for a meeting that was going to have such a significant adverse impact on her career;
 2. there was no adequate discussion or explanation in relation to the criteria used for selecting the claimant;
 3. there was no adequate discussion with the claimant about her suitability for an alternative position. Notwithstanding the inadequacy of the notice referred to at (1) above the claimant did make suggestions about saving her job but these were not duly considered by the respondent;
1. no selection criteria/matrix was presented to the claimant showing how she (her position) was selected for redundancy and why other workers were not selected;
 2. the company did not follow its own redundancy procedure set out in the Contract of Employment.

The Tribunal finds that the claimant was unfairly selected for redundancy and is satisfied that the respondent has contravened Section 6 (3) of the Unfair Dismissals Act 1977 which states:

‘Without prejudice to the generality of subsection (1) of this section, if an employee was dismissed due to redundancy but the circumstances constituting the redundancy applied equally to one or more other employees in similar employment with the same employer who have not been dismissed, and either—

- (a) the selection of that employee for dismissal resulted wholly or mainly from one or more of the matters specified in subsection (2) of this section or another matter that would not be a ground justifying dismissal, or
- (b) he was selected for dismissal in contravention of a procedure (being a procedure that has been agreed upon by or on behalf of the employer and by the employee or a trade union, or an excepted body under the Trade Union Acts, 1941 and 1971, representing him or has been established by the custom and practice of the employment concerned) relating to redundancy and there were no special reasons justifying a departure from that procedure,

then the dismissal shall be deemed, for the purposes of this Act, to be an unfair dismissal.’

Employers must act reasonably in taking a decision to dismiss an employee on the grounds of redundancy. Indeed Section 5 of the Unfair Dismissals (Amendment) Act 1993 provides that the reasonableness of the employer’s conduct is now an essential factor to be considered in the context of all dismissals. Section 5, inter alia, stipulates that:

“.....in determining if a dismissal is an unfair dismissal, regard may be had.....to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal”

The selection criteria, which should be impersonal and objective, were not discussed with the claimant and neither was there any meaningful discussion on alternative positions in the company.

Accordingly the Tribunal determines the claimant was unfairly dismissed (by virtue of being unfairly selected for redundancy) under the Unfair Dismissals Acts, 1977 to 2007. The Tribunal further determines that compensation is the most appropriate remedy and awards the claimant €19,770.00 taking into account that she has already been paid €2199.37 under the Redundancy Payments Acts 1967 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)