

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE *-claimant*

CASE NO.
UD2058/2010
MN2005/2010

Against

EMPLOYER *-respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms M. McAveety

Members: Mr M. Carr
Ms. A. Moore

heard this claim at Cavan on 22nd March 2012

Representation:

Claimant: Mr. Brian Carroll B.L. instructed by
Mr Paul Kelly, John V Kelly & Co, Solicitors, Church Street, Cavan, Co Cavan

Respondent: Mr Andrew Smith, A Smith & Co., Accountants, Unit 13, Scurlockstown
Business Park, Dublin Road, Trim, Co. Meath

Respondent's Case

A Director (DS) gave evidence on behalf of the respondent. The respondent is a small organisation, involved in energy supply, employing four staff with four working directors. The claimant was employed in May 2008 as an administrator. Before her commencement the role was completed by the management with the aid of a contracted accountant. As the company grew the administration role changed from mainly administration to largely accounts orientated.

The company were relying heavily on the services of the accountant; this was a large cost to the company. In order to handle the new larger area of accounts management the company purchased an accounts software package. The claimant and one of the directors (HB) received training and implemented the new software into the company. The respondent found it difficult to reap the benefit of the new software as an inordinate amount of time was still being spent on administration. The directors came to the conclusion that the lack of benefit from the new accounts package was not the fault of the software, but that of its operators i.e. the director

(HB) and the claimant.

The respondent then decided they required a dedicated accounts person with experience in the accounts software package. The dedicated person was employed on a sub-contract basis. Consequently all duties in relation to accounts and the software package were taken from the claimant.

The respondent found itself in a very difficult trading position. As a result they made the decision to make the administrator role redundant. The administrative duties reverted back to the directors. The claimant returned from holidays on the 20th of July and the decision to make her redundant was made in the week of the 29th of July. On the 29th of July 2010 the respondent informed the claimant of this decision, giving her two weeks' notice effectively terminating her employment as of the 13th of August 2010. There was no response from the claimant so the respondent wrote to her asking that she collect her redundancy cheque and sign the RP50 form. There was still no response from the claimant, so the respondent sent a registered letter requesting same in September.

The contractor employed is an 'accounts technician' and works on an hourly basis as requested by the company. She commenced in March 2010 and generally worked 1-2 days per week. She provides services to a number of companies, not just the respondent. The contractor did not need training on the software package. The respondent does not accept that the claimant trained the sub-contractor and then she replaced the claimant. The sub-contractor took over the director, HB's role in relation to accounts. The administrative duties reverted back to the directors.

The sub-contractor did not delegate as much work to the claimant as HB had. The sub-contractor was the claimant's manager in the respondent. DS does not recall HB asking the claimant to show the contractor how to use the invoicing system or recall if invoicing was her only remaining duty. The contractor does the claimant's duties now and works 8-16 hours per week.

Claimant's Case

When the claimant was initially employed she had to start everything from scratch. For the first 12 months all the figures were entered on an excel spread-sheet and then sent to the accountant on a monthly basis. In January 2009 the respondent purchased a new accounts software package. The claimant received extensive training and was competent in its use; *'the reporting was easy and HB liked to run the reports himself.'* The claimant did all the invoicing, banking and post. When the contractor was employed HB was less involved in the accounts but still took an active role. The claimant worked part-time hours.

The claimant was informed that the contractor was being employed to cut the cost of the accountant. The contractor told the claimant that she would need some help with the accounts software package. The claimant trained the contractor on the software and all the other office duties. There were two other small companies operating under the respondent's umbrella and the claimant had been informed that the contractor would be looking after these two companies. The claimant was then told the contractor would be her manager. The claimant's workload continued to decrease all the time and the contractor's hours of work were increasing. The contractor was doing all duties except the invoicing.

Before the claimant went on holidays she was asked to leave the wages preparation for the contractor and to show her how to do the invoicing. Invoicing was the last of the

claimant's duties. On the claimant's return on the 29th of July her filing system was empty and all her passwords had not been renewed on expiry. The claimant was called to a meeting with HB and handed a letter, HB said *'your job is being discontinued as (contractor) is an accounts technician and she'll be doing it.'* HB instructed that she had to work out her notice. When the claimant returned to work the contractor asked her how to do something, she was so upset that she left the respondent premises.

Determination

The respondent did not offer the claimant any alternative employment or consideration was not given to any alternatives. The respondent had provided the claimant with a great deal of training and there was no performance or disciplinary issues. The claimant was proficient in the software accounting package and all the accounts still had to be prepared by the accountant. Both the claimant and the contractor worked the same amount of hours per week.

The Tribunal find that the claim under the Unfair Dismissals Acts succeeds and awards the claimant €17,500.00 as compensation.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)