

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE – *claimant*

UD2150/2010

against

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. T. O'Grady
Mr. M. O'Reilly

heard this claim in Dublin on 16th March and the 14th May 2012

Representation:

Claimant: Mr. Krystian Boino B.L. instructed by JC Hoban & Company, Solicitors,
Suite 114, The Capel Building, Mary's Abbey, Dublin 7

Respondent: Peninsula Business Services, Unit 3 Ground Floor Block S,
East Point Business Park, Dublin 3

Respondents Case

The Managing Director (JL) of the respondent gave evidence. The claimant was employed as a bookkeeper to cover maternity leave. JL gave extensive evidence of the decline in business and the necessary measures needed to keep the company from closing. JL knew he needed 'an expert finance person' so hired (NM) an experienced chartered accountant.

JL explained at several staff meetings that the business was in financial difficulty and that everyone needs to work together to 'pull through.' JL met with the staff and asked each to take a pay cut; the claimant refused saying she couldn't afford it. As a result of a number of refusals by staff it was announced that redundancies would have to be made. The smallest department in the company is the accounts section so the consultation process started there. The claimant was the first person JL spoke to. The prep room staff and drivers were next. The claimant was selected for redundancy and her role was absorbed by JL and the accountant NM.

The consultation meeting was held on the 25th of November and again on the 26th of November. She was offered the opportunity to have a representative at a further meeting and was asked to attend on the 26th of January 2010. The claimant was asked to come up with any alternative suggestions. Simultaneously the claimant made a complaint under the grievance procedure regarding the redundancy process. The grievance was not upheld. The claimant was given notice on the 1st of April 2010 that her position was being made redundant. She was informed that JL and NM would be taking over her role. She was also informed that there was no money in the company to pay redundancy and that she would have to claim from the Social Insurance Fund. The claimant was offered the opportunity to appeal but no appeal was lodged.

NM started working with the respondent as a Financial Controller in November 2009. During his interview he was told the respondent had a deficit of €800,000. He was told the business would be split in two as cash flow was very tight and suppliers were asking for cash on delivery. NM didn't know if the business would continue or wind down.

The first day he arrived, he was introduced as the Financial Controller. The claimant was working as a bookkeeper/ accounts assistant. Everyone was aware of how bad the financial situation was at that time.

NM reviewed all aspects of the business and met with all of the key suppliers. Without the suppliers the business would not continue. He went through the historical customers database to see if they could bring any back. Weekly information was sent to their customers and they looked to increase their business with restaurants, public houses and the public service. They began cold calling customers and set up meetings to get them on board.

NM reviewed the lines of business and reduced the cost of insurance by €10,000 p/a, saved €5000 p/a on waste and added timing switches to reduce the cost of electricity by €4000 p/a.

He knew how sensitive wages were to the staff. A friend of his told him if he needed any advice to contact her. She was not working for the respondent. He e-mailed his friend and asked her for advice on introducing pay cuts. He was not asked to send this by JL. He received a reply from his friend and would have explained the procedures to JL. NM had no control over who was hired or who was fired. The email was retrieved from his pc by the claimant; she was not authorised to access his account.

Following the claimants redundancy, her role was split between NM and JL. They have shared this role for the past two years. When NM started and the claimant was sick, he did her role.

NM's job description was opened to the Tribunal. He has a degree in International Business, worked in the USA and is a qualified accountant

The claimant's job description was opened to the Tribunal. NM explained how the role was broken down between himself and JL.

NM said the respondent was not in a financial position to reinstate the role. It takes him forty hours a month to do the duties. Last year was the first year in the past five that the respondent made a profit. It is still very tight and the company is importing more from Holland and Spain. The respondent still has a deficit of €500,000 and it will take a number of years to clear that debt.

During cross-examination NM said most products in their line of business sold in Ireland are imported from Holland and Spain. The respondent is trying to establish contacts through trade shows. NM said this was his first experience of working with fresh product and in his opinion the claimant could not do his role.

During a meeting with the claimant and JL, he was asked to take minutes. When the claimant called him a personal assistant, he was annoyed and spoke out of turn.

All of the drivers and preparation staff were looked at. All NM has done for the past two years is to give JL advice. JL uses that advice whichever way he feels.

Claimants Case

The claimant finished school in 1990 and did two years of a three year course in taxation. She began working for the respondent in 2007. She met with JL and TL. TL had two children and the claimant's role was to relieve her. The claimant spent nine months dealing with the debtors. The respondent did not have a computer package in place. The claimant got a lot of money in for the company and there was very little bad debt.

M came into the respondent to look after the cash flow and B who was a contractor came in to do the budget for 2009 and set up meetings.

The claimant set up the direct debit for the company. The respondent had an old SAGE payroll package that was never installed. In September 2008, she put the payroll package in place and agreed an arrears payment with the Revenue Commissioners.

When NM was employed she felt out of the loop. She didn't know NM was coming on board. JL told her that NM was the financial controller and that she was to report to him. The claimant was never asked to take on the role of financial controller.

In November 2009, there was a meeting and staff were asked to take a pay cut. The staff were told that the respondent would speak to them individually. She was asked to take a pay cut and said no. Later she agreed to take a pay cut to €40,000 but they asked for a cut to €35,000. The respondent did not come back for another pay cut.

The claimant was let go in April 2010. The respondent never explained to her why she was being made redundant.

During cross-examination the claimant said her role as bookkeeper was a stand-alone role. She was not involved in installing the sage package. A trainer came in for a day to show them how to use it.

The claimant found a hard copy of the email between MN and his friend on his desk. She was annoyed at the contents of the e-mail.

The claimant said she could have turned the company around if she was given the opportunity to do so.

Determination

The Tribunal has carefully considered the evidence adduced over this two day hearing and favours the evidence of the respondent.

The respondent was in a serious financial situation and had to introduce cost cutting measures to continue in business. Drastic action was required and the claimant's role was subsumed into the Managing Directors and Financial Controllers role. The role was not filled since the claimant was made redundant. It was reasonable in the circumstances for the respondent to make the claimant redundant. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)