

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE (*appellant*)

CASE NO.
UD1170/2010

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER (*respondent*)

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. Clancy

Members: Mr T. Gill
Ms H. Murphy

heard this appeal at Galway on 1st December 2011 and 28th February 2012

Representation:

Appellant(s) : Ms Dawn Carney, Sheehan & Co, Solicitors, Augustine Court,
St Augustine Street, Galway

Respondent(s) : Purdy Fitzgerald, Solicitors, Kiltartan House, Forster
Street, Galway

The determination of the Tribunal was as follows:

This case came before the Tribunal by way of an employee appeal of a Rights Commissioner recommendation under the Unfair Dismissals Acts, 1997 to 2007, reference r-078091-ud-09.

This case heard in conjunction with **PW162/2010**.

Background

The respondent operates a recruitment and training company. The claimant was employed as a sales manager from May 2007 until February 2009. She was paid a salary of €45,000pa along with a bonus payment of €15,000 per annum. On 23rd February 2009 she was told that her job was being made redundant.

The parties made extensive written (filed) and oral (noted) submissions to the hearing relying upon various legal authorities.

Respondent's case

The Director (F) stated that the claimant was hired as Group Sales Manager from May 2007 until February 2009. A meeting was held with Managers on 18th December 2008 to discuss the downturn in turnover and the poor performance of the business. A further meeting was held on 23rd December 2008 to appraise all staff. The claimant was present at both meetings. It was stated that redundancies would be open if sales were not forthcoming.

In early 2009 business continued to deteriorate. The claimant's role was identified as one that could be performed by the one of the Directors of the company. A meeting was held with the claimant on 23rd February 2009 to discuss the matter of redundancy. The Director understood that the claimant had accepted the redundancy situation.

In cross-examination, the Director accepted that the claimant performed her duties well. After an incident on 7th January 2009, he apologised to the claimant as he wanted to keep spirits up. The Director was not aware that the claimant felt under stress. The respondent maintained this was a genuine redundancy. Cuts were made in all possible areas of the business.

In re-examination the Director stated that the claimant took the agreement contract document he had given her on 26th February 2009. He had told her to get legal advice.

In reply to the Tribunal, the Director confirmed that the claimant was first to be made redundant. Five more staff were made redundant nine weeks later. He denied that the meeting on 23rd December 2008 was upbeat and no potential redundancies mentioned. He said he mentioned the risk of redundancies to staff at this meeting.

Giving evidence, MC stated that recruitment and training was affected by the downturn in the economy at the end of 2007. She was doing the claimant's job prior to hiring her. She took over the claimant's role after she was made redundant. Cost cutting was discussed at the meeting of 18th December 2008 and it was stated that the respondent may have to make people redundant. It was also stated at the meeting of 23rd December 2008 that if sales did not increase, there would be job losses.

She was aware of the incident of 7th January 2009 between the claimant and F. He apologised for upsetting her and they shook hands. On 23rd February 2009, MC called the claimant at 5pm and told her the role of Group Sales Manager was being made redundant. The claimant asked was it because of the incident on 7th January and MC informed her it was not. They discussed the roles of the two other employees who had less service than the claimant. Both roles attracted a smaller salary than the claimants. The claimant said "I accept this".

In cross-examination, MC denied that the meeting of 18th December 2008 did not give the impression of redundancy. The meeting of 23rd December 2008 was not a positive meeting and staff were informed of the situation. She accepted that the claimant was on sick leave in February 2009. The claimant was not selected because of the incident on 7th January 2009. She did consider the claimant for the recruitment job but different work skills were required and also a different job description applied. The claimant never said she had a grievance until the solicitors letter was received by the respondent.

In reply to the Tribunal, MC stated that it was a joint decision between the Directors to make

the claimant redundant.

Claimant's case

The claimant commenced employment with the respondent as a sales manager on 2nd May 2007. She was paid €45,000pa together with an annual bonus payment of €15,000. Her role was to bring in contracts for the company. There was no mention of redundancies at the meetings of 18th December and 23rd December 2008.

After the incident of 7th January 2009, the Director (F) reluctantly apologised to her and they shook hands. Relations became very tense after that and she got the 'silent treatment' from the directors. When she asked about her bonus for 2008, she was told she was not getting a bonus as she had not performed. The claimant went on sick leave on 11th February 2009 and was crying all the time. She was a mental wreck when she went to the doctor and was out of work due to stress. She got a 3 day sick cert followed by another week.

When she returned to work on 23rd February 2009 MC told her she would like to meet her to discuss going forward. The claimant told her she did not have any plans prepared as MC had previously told her she did not have the time to discuss plans. She said to meet her in her office at 5pm. When they met, MC told her she would have to make her position redundant. The claimant said there were lots of other things she could do instead but there was no other position offered to her. MC told her to come in on 26th February for the handover. The claimant asked was it 'personal' and MC told her it was not.

The claimant subsequently telephoned F and told him she was not signing the document presented to her. The handover was very tense on the 26th February.

In cross-examination, the claimant denied receiving a contract on 18th May 2007. She got it in December 2007. She denied that redundancies were mentioned at the meetings of 18th and 23rd December, 2008. She did not raise the issue about the 'silent treatment' as she felt unable to do so. She could not raise the issue of her stress as tensions were so bad. No-one told her she had not performed in relation to her bonus of 2008. MC did not give her a chance to discuss other options. She told MC she thought she could do the jobs of two other employees who had less service than her. MC made it clear that her position was being made redundant.

In re-examination, the claimant stated that she was not told she could appeal the decision. She had not received anything on grievance procedures.

In reply to the Tribunal, the claimant said she was not aware of her right to appeal the decision. She was never told her bonus was performance based. There was never an issue with her performance and she was never given a company handbook.

Determination

The Tribunal carefully considered the evidence adduced at the hearing and the submissions made on behalf of both parties. The Tribunal accepted that the employer company were facing financial difficulty given that sales and business was down significantly. The Tribunal accepted that five other employees were made redundant nine weeks later and at the Respondent's submissions that the number of full time employees had been reduced from 33 to 22. The Tribunal also accepted that the Claimant's position was not replaced and no new staff were

recruited for the Claimant's position. The Tribunal accept that a genuine redundancy situation existed and that the Claimant was not unfairly dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)