

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.  
UD801/2010

EMPLOYEE     *-claimant*

against

EMPLOYER     *-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman:    Mr. J. Lucey  
Members:     Mr. W. O'Carroll  
               Mr. F. Dorgan

heard this claim at Limerick on 1st February 2012

#### Representation:

Claimant: Mr. Donal O'Rourke BL instructed by Ann Marie O'Hanrahan Solicitor,  
Richard R O'Hanrahan, Solicitors, Limerick Law Chambers, 22 High Street, Limerick

Respondent: Ms Catherine Day Peninsula Business Services (Ireland)  
Limited, Unit 3,Ground Floor, Block S, East Point Business Park, Dublin 3

#### **Background:**

The respondent is a hotel and the claimant was the front office manageress.

The claimant contends that she was made redundant on the premise that her position as front office manageress was no longer viable due to the financial situation within the company. She was initially informed that there would be other staff reductions. She was then told that there would be no other redundancies but there would be reduced hours and pay cuts for other members of staff. Since she has left the hotel has hired an operations manager who has taken over her role. The respondent has also employed someone to count the money which was also one of the claimant's duties. The claimant has seen adverts that were placed with Fás, to hire waiting staff and a part-time breakfast chef.

The respondent denies that the claimant was unfairly dismissed.

#### **Respondent's case:**

The managing director gave evidence to the Tribunal. The respondent is a small twenty

bedroom “boutique” hotel. The hotel has a seventy seat brassiere and a spa they treated the three business units separately. Her role was “getting the business off the ground”. She oversaw the set-up and overseeing each department. She also managed the business financial matters and sales and marketing. She has a diploma/degree in hotel marketing. She previously had a sales and marketing business which she sold.

The claimant commenced in October 2008. The hotel was opened in December 2008. They had known the market was very bad but remained positive. The witness explained that they were the only hotel that opened during the recession.

They looked at all aspects of the business to improve competitiveness. They had weekly meeting regarding the business. She was open to all regarding the hotel figures so the staff would understand what was needed to be done. The accountant gave the three units bi-monthly accounts. They had weekly management meetings.

In 2009 the hotel had a 17% occupancy, in 2010 it had a 19% occupancy and they needed a 43% occupancy to break even. In October 2009 after nearly one year in business they looked at initiatives. The hotel bedrooms area was not performing. They looked at cost cutting such as the accommodation assistants could start at a later time. They knew that they would have to cut costs and each of the departments looked at ways to cut costs.

The claimant’s job description was opened to the Tribunal and these included effectively and profitably manage the room occupancy/yield management, Reservations management, budgeting and forecasting. Sales and marketing, assisting in induction of staff, customer care, staff dress code, timekeeping/attendance and rules and policy compliance, rota for front office, attend management meetings and any other duties as directed by General manager/owner.

The room occupancy was low at around one room per night. There was very little to service. The occupancy rate was 19% in 2010. At present it was 30% and still not breaking even.

She and the accountant (NK) met the claimant on 26<sup>th</sup> January 2010. At the meeting she advised the claimant of the company’s difficult position and that redundancy would have to be considered because of the financial situation and many other measures such as reduced working hours and layoffs. She also advised that the measures were not a result of her or other staffmember’s performance or abilities. The accountant went through the financial status of the hotel and in particular the bedrooms department and that redundancy had to be considered. The claimant mentioned that she was aware of this due to her position and had feared that it would happen.

The witness gave further evidence regarding the meeting to the Tribunal. Also that she asked the claimant if she could put forward any alternative that could be considered at their next meeting. She also advised that a letter of notice would be issued after the meeting.

Letter from respondent to claimant of 26<sup>th</sup> January 2010:

“I refer to our meeting held earlier today where I informed you that the company anticipates having to make redundancies in the near future. I am regretfully writing to confirm that it is likely that your position is at risk and you should regard this letter as a warning notice of that potential redundancy.

Over the next two weeks I will meet and formally consult with you on a regular basis to

discuss alternatives where your employment could be protected. I would ask you to personally consider and bring forward alternative proposals and suggestions at our consultation meetings which you feel are relevant with the aim of avoiding redundancy.

On a personal note, may I say how sorry I am that this situation has come about and I do wish to re assure you that this is no reflection upon your ability or commitment to the company. It merely reflects the very difficult trading circumstances in which we are operating.

As discussed today I have arranged a further consultation meeting with you on 28/1 at your request to review the situation at 2.15 pm in the hotel. You may if you wish be accompanied by either a fellow employee or trade union official at this meeting.

.....”

There was another meeting with the claimant on 28<sup>th</sup> January 2010, also present were the claimant’s husband and another employee.

The claimant was issued with a letter on 03<sup>rd</sup> February 2010 to explain that her role was redundant.

The witness was asked how she selected the claimant’s role as a potential redundancy. She explained that the accommodation area was an area that did not materialise. They just wanted to break even. The financial situation showed them that the accommodation sector had no growth. It was envisaged that she herself would take over the role of front office manageress. She took over this role in October 2010 and this was the first time she took a salary from the hotel. The selection for redundancy was explained to the claimant. She did not hire an operations manager. She herself now counts the overall monies and each department is responsible for counting their monies. Regarding the Fás advert this was for on-going staff/college students as the levels of business were up and down. They do not have a breakfast chef.

The claimant did not get back to her regarding the waitress role/ alternative role. The claimant did not get back to her regarding a position that was in another company that she was involved in.

The witness was asked if there was anyone else doing the same or a similar role of the claimant and she replied, “No I took over her role”.

The Tribunal heard evidence from the accountant for the respondent. He gave evidence as to the financial situation of the hotel. He explained that the owners did not commence on remuneration until September /October 2010.

The Tribunal heard evidence from a witness for the respondent who was asked by the Tribunal if alternative was suggested to the claimant and he replied “there were yes”. He was asked which role and he replied that it was The waitress position.

In cross-examination he disagreed when put to him that no alternatives were put to the claimant.

**Claimant's case:**

The Tribunal heard evidence from the claimant. She commenced with the respondent on 02<sup>nd</sup> October 2008. She got a letter of appointment. She did not get a role description. Her role included managing the front office team. Meeting and greeting guests, cash counting serving in the bar, serving coffees, drinks and food and maintaining the web site. She had other roles such as liaising with Fáilte Ireland, back office admin, spa reservations, for the bar as well as general reservation duties.

On 26<sup>th</sup> January she was at the front desk and the MD told her that they were to meet the hotel accountant. She was not told what the meeting was about. The MD told her that the occupancy was down and that unfortunately the front office manager position was redundant. On leaving this meeting she understood she was leaving her position and that the meeting for two days later was to discuss conditions of redundancy. It was totally out of the blue and she was not aware of redundancies. No options were discussed.

She had asked why she was being made redundant. She asked if anyone else were to be made redundant and she was told that it was possible or probable. She was given time to think of alternatives and she said that she would have to think about it.

Next she was asked by the MD if she had thought of any alternatives. She told the MD that she (the MD) knew of her abilities and that she could work in any part of the hotel. She told the MD that she could and would work in any part of the hotel. The MD did say to her of a possibility of a job opportunity in another company. There was no discussion of a part time or full time waitress position. She did consider her options and give her information

She registered with Fás and when she did she saw adverts for staff for the hotel which upset her.

She was led to believe it was for economic reasons and she did not believe it was a redundancy. One advert was for a breakfast chef and one was for waiting staff. The breakfast chef role did not apply to her. The waiting role was not discussed with her. She understood an operations manager was hired. No role was offered to her.

**Determination:**

The Tribunal are unanimous that the claimant's position was redundant. The employer proved that the dismissal was fair as there was a redundancy. The claim under the Unfair Dismissals Acts, 1977 To 2007, must fail.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)



