

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD2093/2010

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. O'Connor

Members: Mr G. Andrews
Mr O. Wills

heard this claim at Tralee on 22nd May and 3rd October 2012

Representation:

Claimant : Ms Clodagh Brick B L instructed by
Kelleher Coghlan & Co, Solicitors, Limerick Road, Castleisland, Co Kerry

Respondent: Mr Eoin Brosnan, Niall Brosnan & Co, Solicitors,
5 St Anthony's Place, College Street, Killarney, Co Kerry

The determination of the Tribunal was as follows:

Respondent's Case

The respondent is a haulage and transport company which was established in 1997 and its directors consist of a husband and wife team. The company's office was located at their residence. Among the staff are drivers and administrators. According to an accountant who was familiar with the financial affairs of the company the respondent suffered losses in the 2009/10 period. This accountant who only dealt with the female director did not know the circumstances of the claimant. He was not aware at the relevant time that the respondent had recruited another administrator subsequent to the claimant's commencement. As part of cost cutting measures this witness made suggestions but not recommendations to the company.

The female director who undertook certain administrative duties including the financial accounts was by 2009 at "her wits end" due to the declining and serious financial downturn facing the company. This witness who had a good relationship with the claimant described her computer skills as limited. The claimant's role related to inputting data and to general administrative work.

In April 2010 the respondent secured a valuable contract which entailed, among other things, using a new computer software system. This director told the Tribunal that the claimant refused to train or even engage with this new system and, being aware of her limitations, she did not “push” her. As a consequence the respondent recruited a trainee on a part time basis who was familiar with this new computer system. That new recruit became a full time employee in October 2010.

References were made to the relevant dates when the claimant was given notice of her redundancy and when actually that redundancy took effect. A letter giving the claimant notice of her termination and signed by the witness bore the date of 22 March 2010 and a subsequent RP50 also gave that same date as her notice and 21 April 2010 as her date of termination. That RP50 form was signed by the witness and the claimant on 17 June 2010. The witness said that the dates of notice and termination were wrong and given in error and should read as 22 April and 28 May 2010. She also stated that age was not a factor in dismissing the claimant.

The respondent’s co-director who was more involved in the delivery side of the business met the company accountant in relation to the financial affairs of the business. There was a need to cut costs and that accountant advised on that issue. While the company had no issue with the claimant’s work she nevertheless stated her disinterest in a new computer system. As a result of acquiring a contract in the spring of 2010 the company is “doing okay”.

Claimant’s Case

The claimant commenced employment in an administrative capacity with the respondent in early 2007. No written terms and conditions of employment or contract of employment issued to her during the course of her employment. She worked fifteen hours a week spread over three days and enjoyed a good relationship with her employer. In April 2010 when the claimant applied for and was granted a week’s leave for the following month the workload with the respondent seemed to be “doing alright”. No mention was made of redundancy at that time. That situation changed in early May when the female director verbally informed her that her employment was to cease at the end of that month. When the claimant was presented with her redundancy documents in early June she advised the respondent that the dates inputted on them were incorrect. A short time later she received a corrected version of those documents.

The claimant told the Tribunal she had never been asked or approached or offered training on a new computer system in the spring of 2010. The witness added that she had no problem learning and applying a new system if required. Subsequent to her cessation she learned that her position had been replaced by a younger person. In examining and commenting on aspects of that person’s work duties and skills the claimant maintained she had undertaken most of the listed functions and had most of those reported skills. It was her opinion that the age factor played a role in the decision to make her redundant.

A former truck driver with the respondent accepted he had no knowledge of the company’s financial affairs but added that he was not subject to a wage cut in 2009.

An ex- employee who worked in the warehouse noticed there was a new employee around the office. This witness was asked not to mention this to the claimant. Following her voluntary departure from the company this witness phoned the claimant and told her that there was a “new girl” in the office. By that time the respondent had made redundant the claimant’s position.

Determination

Having heard and considered the adduced evidence the Tribunal is not convinced that a genuine redundancy existed in this case. The Tribunal prefers the version of the claimant in relation to the introduction of a new computer system and accepts she was not given a reasonable opportunity to gain knowledge and experience on it. The position that the claimant held appears to have been transferred to other staff as distinct from being made redundant.

The appeal under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the appellant is awarded a gross sum of €10,000.00 as compensation under those Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)