

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

UD2251/2010

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

EMPLOYEE

V

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr R. Maguire, B.L.

Members: Mr J. Goulding
Mr F. Keoghane

heard this appeal at Dublin on 3rd May 2012 and 27th June 2012

Representation:

Appellant:

Respondent:

This case came to the Tribunal by way of an appeal by the employee against the decision of the Rights Commissioner, Ref: r-089666-ud-10/pob.

Respondent's case:

It was the respondent's case that the claimant was let go when her job became redundant.

An Executive Officer from Illness Benefit Section the Department of Social Protection gave evidence that the claimant was in receipt of Illness benefit from before her date of termination and that this benefit lasted for 52 weeks. After this the claimant received Job-Seekers Benefit for 52 weeks and then went onto Job-Seekers Allowance. The witness was unaware that the claimant was a director of a registered company but stated that this would be of no consequence to her entitlement to Illness Benefit as income from investments has no bearing on that benefit.

The Chief Financial Officer (GR) gave evidence on behalf of the respondent. In 2006 the respondent separated from its mother company in the USA and was put up for sale globally. There

was a decline in turnover from 2007 to 2009 and as a result the number of staff was reduced from 56 to 30. There was also restructuring and the witnesses own role was abolished.

In October 2008 there was a significant development and the witness was told that there would have to be a 40% reduction of staffing in Ireland. The respondent started “gathering in administration services” and finance was absorbed by the UK. In June 2009 the only people left were the claimant and two other employees. One of the other employees secured a job in I.T. and that just left the claimant and one other (DOC). The claimant reported to DOC. The witness could not say whether the claimant had applied for a job in the UK.

The claimant was informed on 21st May 2009 that she was to be made redundant on 7th August 2009. DOC was employed under contract and his contract was not to be renewed on expiry. However, there was a change in circumstances and someone was required in order to facilitate the sale of the Irish business. It was decided to extend DOC’s contract as he had the skills required for the job. The claimant did not have the skill sets required.

GR referred to a complaint of bullying/harassment made by the claimant and said that this had been fully dealt with in accordance with the respondent’s grievance procedures. The issue was resolved to the satisfaction of the claimant and she had confirmed this.

Claimant’s case:

SB H.R manager gave evidence that she first became involved with the claimant in February of 2009. She received e-mails from the claimant and a trail of correspondence was sent to her by GR. An allegation of bullying was made and the matter was addressed at a meeting with GR on 2nd February. The matter was addressed again with SB on 11th March and on 31st March. The meeting of 31st March was amicable, the claimant was advised that she could have representation but she declined, all points were addressed and SB considered that the allegations were no longer an issue. The claimant was written to after the meeting and given the right to appeal. No appeal request was ever received.

The claimant BO stated that she began work with the respondent as a management accountant in 2007. Her work was quite extensive and she worked up to 60 hours per week. DOC began to work for the respondent in November 2008 and her understanding was that he was to work alongside her. She trained him in, even though she was given the impression he was highly experienced.

BO stated that on her return from a period of sick leave in January 2009 many problems that had occurred in her absence had been left. They had to be resolved and around this time she felt relationships had become structured and regimented. She was told by DOC that her performance was poor and that more was expected from her. She complained to GR verbally about DOC, he asked if she was happy working at the company, he told her there was a recession and asked her to consider her allegations. BO thought this was an implied threat, she didn’t retract the allegations and was told that DOC was going to put up a counter allegation. She was then asked to work from home for three days. The claimant was shocked and scared. During her meetings with SB the claimant said that she just wanted an apology and assurance that DOC’s derogatory comments

BO was told by letter that her job would no longer exist on 6th May 2009. She continued to work until 27th May but nobody spoke to her anymore and it was obvious to her that she had been singled out and the threat had materialised, she had lost her job because she did not retract the allegations. She went on sick leave and refused to sign her letter of redundancy in July 2009. BO sought advice at this time because DOC was kept on by the respondent and he continued to perform her duties until March 2010.

Under cross examination BO said that she was made redundant because she did not retract her allegations. She could have done the work of DOC and his function was one that was taken from her.

Determination:

It was common case that there was a reduction in staffing required in order to make the business stable. The Tribunal finds that the claimant's role was made redundant. DOC, who the claimant stated continued to do her duty until March 2010, in fact had a different skillset and was also performing duties in relation to the sale of the Irish business. Consequently, the claimant was fairly selected for redundancy. The Tribunal upholds the decision of the Rights Commissioner.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)