

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE  
(*claimant*)

CASE NO.  
UD959/2011

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 F. Moloney  
Mr F. Barry

heard this claim at Dublin on 5th October 2012

Representation:

\_\_\_\_\_

Claimant(s) : In person

Respondent(s) : Mr. Brian O'Sullivan, Ibec, Confederation House, 84/86  
Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

### Background

The claimant was employed by the respondent from 8<sup>th</sup> June 2009 as a Food Service Assistant. As a result of cost cutting measures, the claimant's position was made redundant in April 2011. The claimant is seeking compensation for unfair dismissal as a result of redundancy.

### Respondent's case

The HR representative explained that the respondent was successful in obtaining a commercial contract at site A. The claimant worked in the sandwich bar section on the site. Due to a restructure of the business as a result of a reduction in sales, the claimant was invited to a consultation process by letter dated 9<sup>th</sup> March, 2011. The consultation process involved three meetings over a period of 30 days. The first meeting took place on 11<sup>th</sup> March 2011. The claimant was informed that her 'stand alone' role was no longer required. The HR representative explained to the claimant that the company was committed to finding an alternative position for her within the organisation.

After the final consultation meeting on 11<sup>th</sup> April 2011, a letter issued to the claimant giving her notice of redundancy effective from 11<sup>th</sup> April 2011. The letter also gave the claimant the opportunity to appeal the decision within seven days. The HR representative stated that the claimant had been verbally offered a front of house position by the site Manager but had refused the offer. The claimant did not appeal the decision. The HR representative indicated that she had explained the appeals procedure to the claimant at stage three of the consultation process.

The General Services Manager (GSM) stated that the main duties of the claimant involved, making sandwiches and salad bar selection. She stated she verbally offered the claimant a front of house position in between the consultations, at the same rate of pay. The GSM stated she witnessed the HR representative explain the appeals procedure to the claimant.

In reply to the Tribunal as to why the job offer was not included in the letter to the claimant of 11<sup>th</sup> April 2011, the GSM stated that she did not think of putting it in the letter as the claimant had refused the offer when it was put to her. The GSM could not remember the date when she offered the job to the claimant. Someone else had to be taken on to fulfil the role the claimant refused.

### **Claimant's case**

Giving evidence the claimant stated that she was not offered a job at the front of the house by the GSM. She said she would have taken the job had it been offered. The respondent made staff aware of the restructuring plans. Her work involved the preparation of breakfast, followed by work at the sandwich bar. In reply to the respondent's representative, she confirmed that 99.9% of her work was at the sandwich bar. She was not clear as to how to go about the appeal of the decision and she said she thought the three consultation meetings was her appeal to keep her job. She did not understand what the appeal process was about. She did not ask for the job at the front of the house when it became vacant from 31<sup>st</sup> March 2011, as the kitchen porter was taken out from the kitchen to work it.

The claimant gave evidence pertaining to loss and her efforts to mitigate the loss.

### **Determination**

The Tribunal noted that there was a conflict in the evidence in that the claimant said she was not offered alternative employment and the respondent maintained she was. The claimant alleged she thought the consultation process was the appeal process. She alleged she was not aware she could still appeal the employer's decision when it was given to her.

On the 11<sup>th</sup> April 2011 the respondent wrote telling the claimant she could appeal the decision to terminate her employment by reason of redundancy and to do so within seven days of receipt of the letter clearly stating her reasons.

The notes of the consultation process (3<sup>rd</sup> stage) indicate the claimant felt she was unfairly treated and was taking a case "in legal court". She refused to sign the document i.e. the record of the meeting.

While it does appear unusual that she would not have accepted the job if it was offered to her,

the reality is that, even if she was not offered it as she alleged, she had an opportunity to query this in an appeal which was clearly offered to her by letter of 11<sup>th</sup> April 2011. Even at that stage she did not raise the issue of the other employee being taken out of the kitchen to do the front of house job but chose instead to write to the employer on 15<sup>th</sup> April ( which was still within the time to appeal the decision) stating she was appealing to the Employment Appeals Tribunal.

Having regard to all of the evidence adduced, the claimant was not unfairly dismissed and accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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