

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD1109/2011
RP1460/2011

against

EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. C. Corcoran BL

Members: Mr. T.P. Flood
Mr. F. Keoghan

heard this case in Dublin on 30 October 2012

Representation:

Claimant(s):

Mr. Karl Sweeney BL instructed by
Sean Costello & Company, Solicitors,
Haliday House, 32 Arran Quay, Dublin 7

Respondent(s):

Mr. Gareth Kyne instructed by
Mr. John Barry, Management Support Services (Ireland) Limited,
The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:-

Claims were brought under unfair dismissal legislation in respect of employment from July 1999 to March 2011. Compensation was sought in circumstances where the claimant was made redundant but her role and duties in the respondent company were being carried out by a co-worker. It was alleged that the claimant's role had never been redundant.

The respondent's position was that that the claimant had been made redundant and that the claimant's remaining duties had been transferred to her supervisor in a manner that was

permissible under redundancy legislation. It was further contended that the claimant had been offered alternative employment within the company but that the claimant had declined the offer.

At the Tribunal hearing it was alleged that the claimant had been unfairly selected for redundancy and that the claimant's role was still in existence. In response it was stated that the claimant had received and retained a redundancy lump sum payment.

Giving sworn testimony, STR said that he was a director (now acting as managing director) of the respondent and that he had made the claimant redundant. In 2006 the respondent had employed twenty-three people and had a turnover of ten million euro. It was now employing thirteen people and had a turnover of 4.6 million euro. The company product (DVDs), was in decline.

By the end of 2010 the respondent was down to seventeen staff. STR got PL (a management consultant) in. The advice was to cut more staff costs.

The claimant did administrative work including data entry and accounts work. KTH had trained the claimant in. KTH did monthly management accounts. The claimant did not have the skills for all of KTH's work.

KTH was absent for many months. AG came in while KTH was off. KTH was now on a three-day week doing both her own role and that of the claimant.

Given that the respondent was struggling, people had accepted redundancy. Since January 2011 only temporary staff had been taken on.

Regarding the claimant's redundancy, STR said that the claimant had been upset but denied that he had spent as little as two minutes with her. It was identified that the roles of KTH and the claimant would merge into one. STR told the Tribunal that he had said to the claimant that she could have someone with her when he met with her.

Giving sworn testimony, ANG (an accountant), said that she had started work for the respondent in April 1994. She carried out financial procedures. In September 2000 she left the respondent for a career change. She told SNF (the then principal) that KTH could do her work. ANG was studying but came every Thursday to train KTH. ANG kept doing the audit function every year.

ANG told the Tribunal that KTH was very capable and a good learner who took accounts to the balance sheet. Speaking of the claimant, ANG said that she thought that the claimant could do all that a creditors' clerk could do.

In February 2010 ANG had news from KTH who was going to have to be absent for months on unpaid leave.

ANG stated to the Tribunal that KTH was a more competent clerk (than the claimant). KTH had trained the claimant in. In ANG's opinion, KTH was "definitely a better problem solver" and there was "a huge gulf" between KTH and the claimant.

ANG told the Tribunal that MRB (who had been with the respondent for over twenty-five

years) was still doing the same job relating to cash receipts albeit on a reduced hours basis.

STR had discussed the claimant being made redundant with ANG in early 2011. The first four months of 2011 looked like following the normal annual pattern of being quiet months. Costs had to come down. Dispatch, administration and sales were all cut. The respondent had to cut costs where it could. About thirteen thousand euro per year was saved. This represented between five and seven per cent of the gross salary bill.

The claimant's workload had reduced dramatically. KTH could do the roles of herself and the claimant as what ANG called an "easy merge". MRB's hours were greatly reduced.

ANG stated that the claimant's work had reduced by more than that of others and that seventy to eighty per cent of the claimant's work was purchase processing. MRB was there the longest. KTH and the claimant had the least service.

Clarifying her earlier statement that about thirteen thousand euro of savings were made, ANG told the Tribunal that a saving of twenty-five thousand euro was achieved and that the claimant was not replaced.

Giving sworn testimony, KTH said that she was a book-keeper who worked on goods inwards and financial reporting. She supervised MRB and JNF (a member of the managing family). When ANG left, KTH also supervised the claimant.

However, KTH got leave of absence after her son had a serious accident in Australia.

KTH told the Tribunal that the claimant was not qualified to do what KTH did. Others were made redundant from as far back as 2008 and 2009. Weekly hours went down from forty to twenty-four. She herself was now working a three-day week.

Giving sworn testimony, the claimant said that she had worked for the respondent for some twelve years and that she had started off packing boxes. KTH had replaced ANG and the claimant had replaced KTH. The claimant did accounts duties.

The Tribunal was provided with a list of the claimant's duties which the respondent's representative described as a proposal from the time of the consultancy. The claimant did acknowledge that ANG "would have some stronger ones". The claimant said that she had been about eight or nine years in this (accounts) role. She was still doing her role when KTH went to Australia and ANG took over as the claimant's supervisor.

The claimant got a call at about 16.35 on a Tuesday afternoon when STR wanted to talk to her. He told her that she could go sick or take redundancy. The respondent hoped to open shops in six months' time. The claimant did not see it as a job offer that STR was hoping to open a shop. It was acknowledged that the claimant had accepted a redundancy lump sum payment of over six thousand euro and that she had received her notice entitlement.

On the subject of attempts to mitigate her loss, the claimant said that she had sent her C.V. to employers but that she had not obtained new employment and was on social welfare. She believed that she "could have trained up" to any job. She had been cut from a five-day week to

four days to three.

Determination:

As it was undisputed that the claimant had received a redundancy lump sum the appeal under the Redundancy Payments Acts, 1967 to 2007, is dismissed.

In relation to the claim under the Unfair Dismissals Acts, 1977 to 2007, the Tribunal considered whether or not the respondent's conduct had been reasonable with regard to the claimant's redundancy. The Tribunal finds that there had been a redundancy situation. The respondent's workforce was reduced. It was cut to the bone. On balance, having considered the evidence presented to it, it is the Tribunal's view that the claimant was fairly dismissed by reason of redundancy and that the respondent had conducted the redundancy procedure reasonably well.

Therefore, the claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____
(CHAIRMAN)