

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD750/2011

MN815/2011

RP1055/2011

Against

EMPLOYER

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr N. Russell

Members: Mr J. Hennessy
Mr F. Dorgan

heard this claim at Thurles on 8th November 2012

Representation:

Claimant: Ms Cliona Kenny, Ernest. J. Cantillon & Co., Solicitors, 39
South Mall, Cork

Respondent: Ms Deirdre Blackwell, Blackwell O'Reilly, Solicitors,
Fernfield, Ballypatrick, Clonmel, Co. Tipperary

Background:

The respondent is a small 2 roomed school. In February 2010 following a departmental assessment the board were directed to deal with accommodation issues. They undertook a range of cost-cutting measures and fund raising for the building project. The claimant was a part time secretary and it was agreed at board level to reduce her hours from 16.5 to 5.5 hours per week. It was the respondent's case that as the claimant was not happy with the reduction in hours she was offered redundancy and her role was taken over by the school principal.

Respondent's case:

The chairman of the board of directors gave evidence that he spoke to the claimant at the end of August 2010, he relayed the facts to her and she refused to accept reduced working hours, she advised him that the board could "find the money". Following a further board meeting the claimant was written to, clarifying matters and giving her one week's formal notice that her hours were being reduced or offering her the option of redundancy. The claimant responded to the board in writing, requesting terms and conditions of work and that her contract not be changed. An RP50 was sent to the claimant on 13th September 2010. The claimant then went on sick leave and after follow up retained the services of her solicitor.

The school principal gave evidence that because of lack of space the claimant worked in what was effectively a corridor. If parents wanted to meet a teacher or there was any need for privacy the claimant would have to leave. There was no space for storage and, on occasion, the claimant would be asked not to come in to the school because of meetings or events. After a departmental inspection which was over a three day period, a report strongly recommended looking for grant aid and enlarging the premises. The principal stated that she now did the secretarial duties and would love to still have the benefit of school secretary.

The treasurer gave evidence of the school accounts.

Claimant's case:

The claimant gave evidence that she did an interview and got the job doing 15 hours per week in 2004. Her hours were increased to full time but because it wasn't guaranteed because of the lack of space she went back to three days a week. She would always change her days if it suited the school to do so. She was unaware of any changes but received a text asking her what day she was due to return after the school holidays. The chairman then informed her of her new hours and the building project. She was very unhappy with the situation and stated that it was quite a wealthy little school. She wasn't asked to consider a lesser rate of pay. The claimant has not worked since.

Determination:

The Tribunal has carefully considered the evidence adduced. The claimant has made the case that she was unfairly selected for redundancy at a time when the respondent was being forced to re-develop and had budgetary constraints. The Tribunal is satisfied that the claimant was selected for redundancy because her role was subsumed by a fellow employee. The Tribunal finds she was not unfairly dismissed.

The appeal under the Redundancy Payments Acts, 1967 to 2007 is allowed and the appellant is awarded a statutory lump sum under those Acts and based on the following:

Date of Birth: 15 September 1962
Date of Commencement : 15 October 2004
Date of Termination: 14 September 2010
Gross Weekly Wage: €173.25

Since a dismissal by way of redundancy is a fair dismissal it follows that the claim under the Unfair Dismissals Acts, 1977 to 2007 fails

The Tribunal makes no order under the Minimum notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)