

## EMPLOYMENT APPEALS TRIBUNAL

### CLAIM(S) OF:

EMPLOYEE - *claimant*

against

EMPLOYER – *respondent*

under

### CASE NO.

MN986/2011

UD866/2011

WT351/2011

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Browne  
Mr J. Jordan

heard this claim at Wexford on 12th December 2012

### Representation:

Claimant(s) : Ms Grainne Fahy BL instructed by:  
Nigel D Allen & Co, Solicitors, 3 Slaney Street, Wexford

Respondent(s) : Eddie Whelan, Courthouse Old, Adamstown, Co Wexford

At the outset the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 were withdrawn.

The determination of the Tribunal was as follows:-

### Background:

The respondent is involved in organising the yearly Wexford Opera Festival and owns and manages the Wexford Opera House. The claimant commenced employment on 21<sup>st</sup> April 2008 until her employment finished by reason of redundancy, the respondent contends, on 16<sup>th</sup> March 2011.

On 14<sup>th</sup> February 2011 the Board of the respondent company made a decision to restructure and downsize the company. A meeting was held with all staff. A series of one-to-one meetings were then held to advise staff how they might be affected by the restructuring. The final decision included the redundancy of 4 full-time and a reduction to part-time of 5 additional posts. Roles were realigned with responsibilities absorbed into remaining roles. The full-time positions to be made redundant were the Artistic Manager (Opera House), Box Office Manager, Administrative Assistant and Friends (of the Opera) Co-ordinator. The claimant was employed as the Box Office Manager.

Part of the reasoning to end the position of the Box Office Manager was to create a part-time fixed term temporary position to supervise the bookings for the Wexford Festival Opera. As this position was

part-time and non-exclusive the person employed was free to work for another employer. This position would cease with the conclusion of the festival. This position was offered to the claimant but she declined the offer. The claimant ceased employment on 16<sup>th</sup> March 2011.

The new role commenced on 26<sup>th</sup> May 2011 and ended on 12<sup>th</sup> November 2011.

### **Respondent's Position:**

The respondent's position is that they had carried out fair procedures in the consultation process with staff, including the claimant. She had been offered alternative employment but declined the offer. The witness did not accept that the claimant was not consulted on the downsizing of the company. An independent consultant had spoken with staff. (He was not present on the day of the hearing to give evidence.)

### **Claimant's Position:**

The claimant stated that she had no meeting with the independent Consultant. She had attended the general meeting on 15<sup>th</sup> February 2011 where a statement was issued regarding redundancies. She received verbal redundancy notice on that day. She requested a meeting where the alternative position was discussed. She requested a draft contract to decide if she would take the position. On 11<sup>th</sup> March 2011 she declined the offer of the alternative position. She ceased employment on 16<sup>th</sup> March 2011. She gave evidence of loss.

### **Determination:**

Having considered the evidence adduced at the hearing the Tribunal finds that the respondent had a need to effect redundancies in order to minimise costs. However, the Tribunal finds that the procedures used to effect the redundancy of the claimant was otherwise than in accordance with fair procedures.

Fair procedures at a minimum, require an employer to engage with employees at an early opportunity, that employees are kept apprised of timelines and afforded opportunities to consider proposals and submit other alternatives to the proposed redundancies. It may also be appropriate in some circumstances to offer a right of appeal from the redundancy decision.

The Tribunal finds:-

That the respondent failed to consult or engage with the claimant prior to announcing the decision to restructure.

Failed to properly or at all consult with the claimant on the procedures that it adopted to effect the redundancies.

Did not afford the claimant a reasonable opportunity to consider alternative proposals.

Failed to listen or to consider alternatives proposed by the claimant.

Did not afford the claimant a right to appeal the decision.

The Tribunal accepts the evidence of the claimant that there was no prior consultation with her prior to the announcement on 14<sup>th</sup> February 2011 that her role was being made redundant. The Tribunal further accepts that this was a shock to a person of the calibre of the claimant and that in the 7-day period before any offers of alternative roles were made to the claimant her confidence in both herself and the confidence and trust in the respondent suffered as a result.

The Tribunal finds that two alternative roles were offered to the claimant but these were offered in or about a week after the claimant had been informed that she was to be made redundant and following the raising of queries by the claimant as to why she had been selected for redundancy. The Tribunal accepts that neither of these roles were suitable alternative roles. The Tribunal is further satisfied that one of these roles was not

capable of acceptance in that on the respondent's own evidence it was a *draft* offer. The Tribunal finds that the claimant was not afforded any reasonable opportunity to consider the offer in that there was evidence that this alternative position had been advertised less than a month after the offer had been made to the claimant. The second role was unsuitable because it was to fill the role of a colleague, combined with the claimant's own role temporarily whilst that colleague was on maternity leave.

The Tribunal is satisfied that the claimant sought to enter into negotiations with the respondent as regards alternatives to making her redundant. The Tribunal is of the opinion that the claimant would have had much to offer in securing the financial viability of an enterprise such as the respondent and thus feels that at least the respondent should have listened to proposals or suggestions from the claimant.

The claimant was not offered a right of appeal from the decision to make her redundant.

The Tribunal makes no finding as to whether the claimant's approach to her role with the respondent and in particular her 'no tickets until paid for' approach had any impact on her selection for redundancy but accepts the claimant's evidence that this could have offended Board members albeit that this was not the intention of the claimant but rather she was diligently and conscientiously fulfilling her role with the respondent and at all times acted in the best interest of the respondent.

Accordingly, the claim under the Unfair Dismissals Acts 1977-2007 succeeds and the Tribunal awards the claimant compensation in the amount of €22,000.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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