

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD1449/2011

RP1917/2011

MN1534/2011

WT572/2011

Against

EMPLOYER

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Taaffe

Members: Mr. L. Tobin

Mr. C. Ryan

heard this claim at Dublin on 17th December 2012

Representation:

Claimant:

Mr Conall Bergin, Osbornes, Solicitors, Town Centre House, Naas, Co Kildare

Respondent:

Mr Mark McParland, Solicitor,

No 6 Argyle Square, Morehampton Road, Donnybrook, Dublin 4

At the outset the claimant withdrew her appeals under the Organisation of Working Time Act, 1997 and the Redundancy Payments Acts, 1967 to 2007.

Respondent's case

The respondent is an estate agent and the claimant was employed as a Sales Negotiator from 11th Sept 2006 until her employment was terminated by way of redundancy on 23rd Feb 2011. The company was formed in 2001 and was based in Lucan, Co.Dublin. Initially the business was doing well and opened offices in other areas. However in 2008 the business "fell off a cliff"

and by the time the claimant was made redundant the other offices had been closed down. The only employees left were the owner (DL), an office administrator (AB) and the claimant.

The claimant was on maternity leave from April 2010 to November 2010. During her absence the respondent employed a temporary replacement who left before the claimant returned to work. DL met with the claimant on the day she returned from maternity leave and they discussed the fact that there had been a 10% reduction in pay imposed on all employees in June 2010. DL was surprised to be told now, in the course of the hearing, that the claimant did not know about the pay cut at the time it was imposed. Furthermore DL denied that he had sought a further 10% cut in wages from the claimant.

In the four months to Feb 2011 there were only three sales and DL came to the conclusion that he would have to take on the claimant's job himself and make her redundant. At the time DL was taking a salary of €12,000 per annum from the business and he was an experienced Sales Negotiator. DL decided to continue to employ AB as an administrator as he needed her to fulfil this role and could not do so himself. AB was with the company since 1997.

DL called the claimant into his office on 26th Jan 2011 and told her that he had no alternative but to make her redundant from 23rd Feb 2011. The claimant had been on a four day week since her return from maternity leave but as far as DL was concerned she was paid her notice on the basis of a five day week.

Claimant's case

The claimant contended that she was unfairly selected for redundancy because she had been on maternity leave. She told the Tribunal that a former colleague told her that DL was terrified that she would go on maternity leave again.

AB was managing the Lucan office but had stepped aside some time ago to allow the claimant take over that role. However the claimant told the Tribunal that she did her own administrative work and could have fulfilled the role of administrator. She felt that her role was being undermined for some time before her dismissal and that DL had decided, while she was on maternity leave, to make her redundant.

The claimant had agreed a sale on a property on 24th Jan 2011 and told the Tribunal that she had been congratulated by DL and told not to worry about her future as things were looking up. However on 26th Jan 2011 DL called her to his office and told her that he was letting her go as he was taking over her job and AB was doing the administration. The claimant felt it was unfair of DL to reassure her when he knew what his intention was all along.

Determination

The Tribunal carefully considered all of the evidence adduced. In respect of the claim for minimum notice it is found and determined that the payment made to the claimant was in excess of the statutory limit and that the claimant's claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 therefore fails.

In relation to the principal claim the Tribunal firstly finds that a genuine redundancy situation arose. It secondly both considered and addressed the question as to whether the claimant was fairly selected for redundancy by the respondent.

The Tribunal is satisfied that a consistent and very significant decrease in the volume of the business of the respondent took place over a comparatively short period of time that was unable to be arrested and that by definition seriously impacted upon the position of the claimant within the respondent company as she was the Principal Sales Negotiator. It is found and determined that the aforementioned took place prior to the redundancy of the claimant.

While the manner in which the communication of the redundancy was relayed to the claimant was unnecessarily insensitive it is found and determined that the decision to make her redundant was taken for understandable reasons and only after reasonable consideration.

The Tribunal therefore finds and determines that the claimant was fairly selected for redundancy and that her claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)