

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE *-claimant*

CASE NO.  
UD718/2011

Against

EMPLOYER *-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr D. Hayes B.L.

Members: Mr M. Carr  
Mr N. Dowling

heard this claim at Trim on 26th November 2012

#### **Representation:**

Claimant: J.A. Shaw & Co, Solicitors, Marlinstown Office Park, Mullingar, Co Westmeath

Respondent: Peninsula Business Services (Ireland) Limited, Unit 3, Ground Floor, Block S,  
East Point Business Park, Dublin 3

The fact that a dismissal occurred is not in dispute in this case. The claimant contends that she was unfairly selected for redundancy.

#### **Respondent's Case**

The respondent is a wholesale drinks distributor. The respondent has two strands of business; as a beer distributor and as an agent for imported products. Wholesale was 90% of the business and premium imported drinks 10%. That situation has now reversed with the imported drinks area making up the majority of the respondent's business. This meant that the claimant's administration duties were reduced. The wholesales aspect of the business dropped drastically when the Government repealed the Groceries Act in 2008. In general the cost of running the business increased significantly. The respondent employed a sales manager to oversee the imported drinks portion of the business, after 10 months of employment the respondent's turnover continued to decline. This led to the respondent undertaking a cost cutting review of the distribution function in 2010. In consultation with the employees a number of measures were introduced including one position being made redundant.

The claimant was employed as an Office Manager responsible for credit control, assisting the sales representatives and administration. Originally the commercial manager was responsible for the claimant's duties but the role was split when the claimant was employed. It made business sense to go back to the original arrangement where the commercial manager also had responsibility for the administration. As imported drinks are now the main source of business the requirement for administration/credit control was significantly reduced to make it viable for the commercial manager to take on the duties.

The claimant was involved in the consultation process as part of the cost cutting review. The claimant's role was reviewed; it was a stand-alone role. A meeting was held with the claimant on the 27<sup>th</sup> of September where she was informed of the decline in business, the risk of redundancy and that the respondent was constantly reviewing the sales rate. She was asked to suggest any alternatives to redundancy. A second meeting was held with the claimant on the 11<sup>th</sup> of October 2010 where the decline in turnover and administration issues were discussed. The claimant made a few suggestions including implementing an electronic payment transfer system and suggested she take over the book-keeper role. The current bookmaker had 30 years' experience so it made sense to retain her as the book-keeper; she also agreed to take a wage reduction. The claimant would have to take a course of study in order to be able to do the book-keeping role. A further meeting took place on the 18<sup>th</sup> of October 2010 where the claimant suggested that all staff take a 5% or 10% pay cut. The respondent does not recall the claimant offering to work part-time.

At the meeting of the 24<sup>th</sup> of November the respondent went through all the alternatives the claimant had suggested. The respondent had a lot of staff on the National Minimum Wage so an across the board pay cut was not possible. The distribution manager worked a very significant amount of extra hours so his wages could not be reduced. The drivers' roles and duties had already been streamlined and whenever business was quiet they took annual leave. Both the owners of the respondent had salaries less than that of the claimant. The respondent, with advice from their auditors had implemented all the cost saving measures possible.

On the 1<sup>st</sup> of December the claimant was again informed that there was a strong possibility that her position would be made redundant and asked for any further suggestions. The claimant accused the respondent of selecting her personally for redundancy as opposed to the role. The respondent explained the duties, qualifications and responsibilities of the commercial manager and how the roles were not comparable. The commercial manager has a B.A. in Commerce and an MA in P.R. The commercial manager was also part owner of the company with vast experience working for large multinational drinks companies. The claimant's role was stand-alone so selection criteria did not apply.

On the 20<sup>th</sup> of December the claimant agreed all the minutes and signed the RP50 form. She appealed the decision; the appeal went to a director of a sister company. The claimant's position was completely subsumed into the commercial manager's role. The new structure is working well but the respondent is still operating at a loss.

A staff member was hired on a 1 year contract to cover another staff member's maternity leave. The claimant assisted in her training on her return from maternity leave. The claimant was her manager. The claimant's role was not comparable to the warehouse or sales positions.

The appeal was heard by the respondent MD's mother EmcG. She is not employed by

the respondent and had full authority to reverse the decision. She was given all the minutes and witness statements of the consultation process in advance of the appeal meeting on the 2<sup>nd</sup> of February 2011. The claimant had her solicitor present at the appeal meeting. The decision was upheld on the grounds that the decision was impersonal, she was not unfairly selected for redundancy and all other alternatives were explored. In regard to the appeal EmcG stated, *'We're dealing with someone's life; I was impartial.'*

### **Claimant's Case**

The claimant believes firstly that this was not a genuine redundancy situation and secondly that she was unfairly selected for redundancy. The claimant managed and trained 3 administration staff. She also trained the person who was hired to cover one of the existing staff member's maternity leave.

The claimant had a number of meetings with the respondent regarding redundancy. The claimant was the only staff member to receive the letter of the 11<sup>th</sup> of October advising her of the risk of redundancy. The Operations Manager said to the claimant after that meeting on the 11<sup>th</sup> of October, *'sorry to hear you're redundant.'* The claimant felt that the onus to provide alternatives and suggestions was put completely on her. The claimant did suggest wage reductions, working part-time and selling new products; the respondent offered no alternatives. The respondent did go through her suggestions with her.

The claimant had completed training on the SAGE software package as the respondent was looking into upgrading their system. The existing book-keeper did all the accounts manually. The claimant accepts that her role was stand-alone but she was capable of doing all the office roles. The respondent informed her that her role could be subsumed into the commercial manager's role. The claimant never raised an issue about the appeal officer's impartiality.

The claimant gave evidence of her loss and her attempts to mitigate her loss.

### **Determination**

The Tribunal find that the claimant's role could easily be subsumed into the Commercial Manager's role but the reverse was not possible. The claimant accepts that her role was stand-alone with no other comparable employees.

There were procedural deficiencies in effecting the claimant's redundancy but the Tribunal find that the claimant made no real effort to gain alternative employment. The Tribunal find that the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and awards the claimant €9,000.00 minus the amount of €4,260.00 already received as a redundancy payment.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)