

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.
UD1191/2010

EMPLOYEE *appellant/employee*

against the recommendation of the Rights Commissioner in the case of:

EMPLOYEE *-employee*

-v-

EMPLOYER - *Employer/employer*
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms K. T. O' Mahony B.L.

Members: Mr. W. O'Carroll
 Mr. F. Dorgan

heard this appeal at Ennis on 1st December 2011 and 26th March 2012

Representation:

Appellant: REP

Employer: Mr. Chris O'Donovan, IBEC Mid-West, Gardner House, Bank
Place, Charlotte Quay, Limerick

Background:

This case is before the Tribunal by way of an employee's appeal against the Recommendation of a Rights Commissioner, ref: r-074503-ud-09 under the Unfair Dismissals Acts, 1977 To 2007.

Hereinafter the employee is referred to as the employee and the employer as the employer.

Summary of Evidence

The employer is part of a multinational organisation with a presence in Shannon, other locations in Ireland and in some European countries. It manufactures a speciality product and its customers include the automotive and ship-building industry. The employee commenced employment with the employer in the summer of 2006 as an administrative assistant and PA to the Vice President.

By mid 2008 the global recession was having an impact on the employer's business and the outlook for the last two quarters of 2008 was poor as were the forecasts for 2009. With the downturn in its revenues and poor financial prospects for 2009 the message from head office was to reduce costs to

stem the deterioration. Everything was looked at with a view to cutting costs, suppliers were asked to reduce their price, savings were made on utilities such as oil and electricity and ultimately the employer had to make redundancies. Each function was scrutinised. The employer decided to make the employee's position redundant. This was a stand alone-position. A substantial part of the employee's role was making travel arrangements and henceforward alternative arrangement were being made for this function; answering phones which had also formed part of the appellant's role was being automated, debit and credit control were passing to accounts and other functions were going to other staff.

At a meeting on 28 October 2008 the employer's financial controller informed the employee that her position was being made redundant. By letter of 31 October 2008 the employer confirmed to the employee that her position was being made redundant, effective from 31 December 2008 and details of the redundancy and ex-gratia payments were provided. The employee was shocked. She did not accept that the employer was going through a difficult financial period and her workload had not been decreasing. There was a dispute between the parties as to whether the employee indicated an interest in a part-time position.

The employee's trade union official attended at a meeting with employer on 5 November, where alternative work for the employee was considered. The employee felt that their suggestions did not get a fair hearing and that the employer had already decided that she was to go. Her working relationship with the financial controller rapidly deteriorated and she contended that he threatened to withdrawn her modest ex-gratia payment.

The employee accompanied by her solicitor met the employer on 23 December. Alternative positions were again considered. The employee raised the upcoming vacancy in accounts and indicated interest in the position.

A vacancy had arisen in the customer service in May 2008. The employer maintained that the position had been offered to the employee at the time but she was not interested in it. The position was filled by an external candidate, who had 20 years' experience in the area. The employee maintained the customer service position had only been mentioned to her; she frequently helped out in customer service. An accounts position was becoming available in early 2009. Some of the Financial Controller's duties were being subsumed into that role and a qualified accountant was required for the position. The employee did not have the necessary qualifications and experience required to take up the accountancy position. An accounts assistant position was not filled. The employer sent a memo to their sister company in Ireland to see if there was a vacancy for the appellant. There was a dispute as to whether the employee had indicated an interest in part-time work.

Within a year, starting in late 2008 the respondent had implemented 15 redundancies. A project to manufacture a sensitive key product which was being importer from the U.S. was deferred until 2011. In that year the company began to recruit again.

The employee accepted that her role no longer exists in the company.

Determination

Section 7 (2) of the Principal Act as amended provides that

an employee who is dismissed shall be taken to be dismissed by reason of redundancy, if the dismissal is attributable wholly or mainly to –

- (c) the fact that his employer has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employee had been employed (or had been doing before his dismissal) to be done by other employees or otherwise*

The Tribunal is satisfied that employee's redundancy comes within the meaning of the aforesaid section. As the employee was in a stand-alone position the issue of selection criteria does not arise.

In early November 2008 the employee's trade union representative engaged with the employer on options other than redundancy for the employee.

The Tribunal had some concerns as to whether the employer should have transferred the employee to the customer service position. However, the uncontroverted evidence of the employer was that LIFO only applied at the level of the operatives. The only other position becoming available at the relevant time required and was filled by a qualified accountant. The employee did not have this qualification.

In the circumstances, the Tribunal finds that the claimant's dismissal was by reason of redundancy and was not unfair. The appeal under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)