

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE - *claimant*

CASE NO.

RP342/2011

UD292/2011

MN284/2011

against

EMPLOYER - *respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr N. Russell

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

heard this claim at Thurles on 14th December 2012

Representation:

Claimant(s) : Ms. Elaine Power Bl instructed by McMahon English,
Solicitors, 5 Killoran Terrace, Catherine Place, Limerick

Respondent(s) : Mr. Brian Gageby BL instructed by William Fry, Solicitors, Fitzwilton
House, Wilton Place, Dublin 2

Respondent's Case

Witness for the respondent (AK) gave evidence that the respondent is a large multi-national engineering company operating in 29 countries. At the height of the economic boom the company employed over 500 employees in Ireland. The company was involved in a major electrical installation project on Dublin site and had 480 employees working on that site for a period of time. This project wound up from April/May 2010 and the company now has 85 employees in Ireland. The claimant was employed in an administrative training and development co-ordinator role lending support to apprentice electricians employed by the company. She was also responsible for organising internal executive courses in leadership management and skills enhancement. She reported to (DO'N) who was head of a group role for

training and development within the company. Following the decline in construction business which started in 2010 the company implemented a large number of redundancies. The number of apprentices reduced by over 90% and the training and development courses for which the claimant had responsibility were outsourced to a university located in England. The claimant's line manager (DO'N) was made redundant in March 2010 and the claimant's position was also made redundant in June 2010.

The witness gave further evidence that the company advertised for two corporate human resource positions following the claimant's redundancy. The positions were publicly advertised and carried a higher salary than that paid to the claimant. She gave evidence that the claimant did not have requirements or experience for these positions.

The claimant was paid her statutory redundancy entitlement and was also given one month's notice which she was not required to work. She was also offered an ex-gratia payment of €10,000 which she declined to accept.

Claimant's Case

The claimant gave evidence that she commenced working for the respondent company in March 2007. She worked in an administrative capacity and had a training and development role within the company. She arranged, co-ordinated and scheduled training and development courses. She worked and liaised with FAS management in relation to apprentices and reported to (DO'N) and (GG). She was aware that (DO'N) had been made redundant in March 2010 but understood that her position would remain as she also worked to (GG) and she had very little work with (DO'N).

On the morning of 9 June 2010 she attended a training and development meeting with (GG) and (TK), a senior member of management. She subsequently received an e-mail from (GG) inviting her to a meeting later that afternoon. She had no knowledge of the content of the proposed meeting. She attended the meeting and was told by (GG) that she was being made redundant. It was explained that the number of employees in the company had reduced and the courses for which she was responsible were being outsourced to a university in England. This was a massive shock to her and she became emotional and did not speak at the meeting. She was told that there were no alternative positions available for her in the company. She was told that two positions were going to be filled by the company but was told that she did not have the experience for these positions.

She gave evidence that she was not offered the opportunity to have a representative present with her at the meeting. She was willing to re-train or accept any other role within the company. She would have been willing to re-locate and work abroad for the company but none of these options were offered to her. She was given one month's notice and was paid her statutory redundancy entitlement. She was also offered an ex-gratia payment of €10,000 but did not accept this offer as she needed time to think about it. She was also required to sign a waiver if she accepted the offer and ultimately this payment was not made to her.

Determination

The Tribunal has enormous sympathy for the claimant who was clearly traumatised by the loss of her position with the respondent company, coming as it did at a formative time in the claimant's career. She was clearly an excellent worker and recognised as such by the respondent company.

The Tribunal, however, is satisfied that a genuine restructuring was occurring within the respondent company due to significant economic changes which led to a redundancy situation. The Tribunal is further satisfied on the evidence of both parties that the claimant's role became redundant and that there was no unfair selection of the claimant.

In all the circumstances, the respondent company acted reasonably. The Tribunal does not agree with the claimant's assertion that it was unreasonable of the respondent company not to find a position for her elsewhere in its worldwide operation.

The respondent company did show sympathy for the claimant's loss by offering an ex-gratia payment of €10,000 to the claimant on her redundancy. This respectful response to the claimant's difficulties was further reflected in a similar approach to her cross-examination before the Tribunal by the respondent company's representative. The Tribunal feels that the extent to which the claimant was traumatised affected her ability to arrive at a reasonable conclusion in relation to this offer. It was not indicated to the Tribunal whether this ex-gratia payment could still be availed of by the claimant. This, of course, is not an issue for the Tribunal.

The claim under the Unfair Dismissals Acts 1977 to 2007 fails. The Tribunal holds that the claimant was made redundant and as the claimant has already received her statutory redundancy entitlement the claim under the Redundancy Payments Acts 1967 to 2007 fails. It was accepted by the parties that the claimant received one month's notice of the termination of her employment and accordingly the claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)