

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE *-claimant*

CASE NO.

UD591/2011

against
EMPLOYER *-respondent*

under

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 9th October 2012

Representation:

Claimant:

Respondent:

Summary of evidence:

The respondent is a hotel. The Financial Controller gave evidence that he commenced in the role in September 2008 just as the economic downturn began. Therefore, one of his first duties was to reduce the costs incurred by the hotel which had opened in 2007.

By early 2009 a decision was taken to place staff on reduced working hours depending on the availability of work. In addition staff that had departed the employment were not replaced as the hotel was only busy at weekends. Early 2010 brought a similar situation.

Due to business levels in the beginning of each year it was decided in November 2010 that the hotel would only open at weekends during January and February 2011. The hotel repeated this step in 2012.

The claimant held the role of accommodation supervisor and she reported to the accommodation manager. During 2010 the staff of the hotel were placed on a three-day week, as the hotel closed mid week. As a result the claimant's position was selected for redundancy and she was informed of this at a meeting on 17th December 2010. The financial situation of the hotel was also outlined to her at this meeting. Prior to the claimant's position being made redundant her hours were between 19 and 24 hours per week. The claimant signed an RP50 form on 5th January 2011 and received a redundancy payment of €2,678.

During cross-examination the Financial Controller confirmed that the other accommodation supervisor was also made redundant and in an effort to reduce costs he met with suppliers and attempted to reduce costs across all areas. The number of staff working in this department has reduced considerably and there are now just 15 staff working in this area.

In reply to questions from the Tribunal, the Financial Controller recalled the claimant asking about an alternative position at the meeting in December but she did not raise any specific position.

The General Manager gave evidence that he began working in the hotel in March 2008 and in the time that he worked there he did not recall the claimant working in the reception area.

After the decision was taken in November 2010 to operate the hotel only at weekends, the General Manager met with the claimant in early 2011. He explained to her that due to decreasing revenue and increasing costs her role was redundant. As the hotel would be operating just two days per week there would be just enough work for the accommodation manager. The other part-time accommodation supervisor also had her employment terminated around this time. No other hotel department had as much management staff as the accommodation department. By the time her position was redundant the claimant was working 19 hours per week as requested by her following a return to work from sick leave in August 2009 and the General Manager acceded to this request.

During cross-examination it was put to the General Manager that the claimant had trained in the reception area. The General Manager stated that there was no alternative position he could offer to the claimant in the accommodation department as she had held a specific role. There was no other alternative he could offer in the hotel as at that time all of the staff were working reduced hours.

It was put to the General Manager that a maternity cover position was available in or around the end of December 2010 but that the claimant had not been considered for this post. The General Manager replied that the position required a skillset specific to receptionist work. He was unaware of any receptionist experience the claimant held and in any event she did not apply for this post which was advertised internally. It was also put to the General Manager that in March 2011 there was a further opportunity of employment. The General Manager confirmed that the hotel advertised at that time for some seasonal accommodation assistants. However, it was not hotel policy to telephone previous staff members to offer positions. In any case the claimant did not apply for the position. It was put to the General Manager that the person who was employed as a seasonal accommodation assistant in April 2011 works full-time and remains in the employment of the hotel on a continuous basis.

In reply to questions from the Tribunal, the General Manager stated that the situation changed in April 2011 and that a decision was taken in late March to employ a seasonal accommodation assistant. Lay-off was not considered at the time of the claimant's redundancy as at that time it was not known for how long the situation would last.

It was the claimant's evidence that her employment commenced in March 2007 and she initially worked as an accommodation assistant. In her first year of employment she was promoted to accommodation trainer. After this she worked for almost four months in the reservations department and she also trained in the reception department. In or around this time she worked in reception occasionally but mainly she carried out duties in the reservations

department.

In October 2007 the accommodation manager sought a return of the claimant to the accommodation department. The claimant was promoted to accommodation supervisor but she also carried out the reception duty of allocating room numbers to bookings.

Prior to the meeting in December 2010 the claimant had no idea that there was a possibility that her position could be made redundant as every year there was a reduction in hours during off-peak months. The claimant had in the past carried out other duties during these months such as laundry duties. The claimant stated that she would have accepted a reduction in hours as an alternative to redundancy and she was disappointed that her position was selected for redundancy.

The claimant gave evidence pertaining to loss. The claimant did not apply for the accommodation assistant role in April 2011 as she was unaware of the position.

During cross-examination it was put to the claimant that occupancy levels were low but the claimant replied it was the same every year. The claimant confirmed that she last worked in the reception department in October 2007. It was put to the claimant that she did not raise this as an alternative during the meeting held notifying her of redundancy. The claimant stated that she was in shock at the meeting having been informed that her position was redundant.

Determination:

Having considered the evidence adduced at the hearing the Tribunal finds that the respondent had a genuine need to make redundancies due to a downturn in business. The Tribunal accepts that this situation can change and that the need for staff in the business of the respondent fluctuates from time to time. However, the Tribunal finds that the respondent did not adequately or at all consider whether there was suitable alternative work to offer the claimant and to this extent the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds.

The Tribunal accepts that the failure regarding suitable alternative work was due to an oversight rather than a deliberate act on the part of the respondent.

The Tribunal awards the claimant an amount of €2,322 over and above the redundancy lump sum of €2,678.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)