

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE – *claimant*

CASE NO.  
UD1600/2011

against

EMPLOYER – *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. O'Leary BL

Members: Mr A. O'Mara  
Mr J. Flannery

heard this claim at Drogheda on 11th February 2013

Representation:

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Claimant(s): Mr William Fawsitt BL, instructed by:  
Mr Neil Buckley  
Solicitor  
30 Old Rectory Park, Dundrum, Dublin 14

Respondent(s): Mr Aaron Shearer BL, instructed by respondent

The determination of the Tribunal was as follows:-

**Background:**

The claimant was employed as a legal secretary by the respondent from 1999 until July 2011. She was dismissed by reason of redundancy. The claimant's case is that she was unfairly selected for redundancy.

**Respondent's Case:**

The respondent gave evidence. A practice he was involved with was dissolved in 2007. He established a new practice with a solicitor from the original practice. He was principal of the new practice. He decided which staff members he would bring to the new practice. The

claimant was one of the staff members he brought to the new firm. They purchased the original firm's building at the height of the market. There was a large mortgage taken on the property. The practice occupied the first floor of a two storey building. The ground floor was vacant. The claimant worked at reception which was located on the ground floor. The respondent mainly covered litigation and family law. His partner covered conveyancing, in particular for builders. While working at reception the claimant carried out some conveyancing paperwork for the respondent's partner. She had previously worked as the partner's secretary. There was currently very little conveyancing work.

During the last year of her employment the claimant brought a case against the respondent for unpaid wages. Other than this situation there were no disciplinary issues regarding her. There was no issue regarding the quality of her work.

The respondent let the ground floor in 2008. The respondent had hoped that the tenant would contribute half of the receptionist's fees, but ultimately he only received a €2k contribution. The tenant installed an automatic phone system. This letting was unsuccessful and the tenant left with outstanding rent to be paid.

The respondent's partner suffered a nervous breakdown in 2009. After a phone call from the partner it came to light that he had not been dealing with his work and that the Law Society were investigating his work. He had been intercepting the post coming into the office and so the respondent was unaware of the situation. The partner was admitted to hospital. The partner had taken between €200k and €300k for stamp duty but had not paid it to the Revenue Commissioners. The respondent had to deal with all the outstanding issues in that regard. The partner did not return to work at the practice. The respondent then became the only earner in the practice.

There was also a large claim made against the practice at this time. The renewal quote for the indemnity insurance came in at €100k up from €29k the previous year. The respondent negotiated this down to €90k which was borrowed from a bank. The respondent also suffered health problems during this time and was admitted to hospital for a week.

The respondent looked at cutting costs at the practice. In 2011 he had two secretaries, a book keeper, a senior consultant had one secretary, the partner had one secretary, the claimant was on reception and there was a junior solicitor. The claimant was the second last into the practice. His second secretary was last in.

He held a meeting with the staff on 30 May 2011. Prior to that meeting he met individual staff members and discussed concerns he had with their work. At the group meeting he explained the financial situation to them. He told them that he was considering a pay cut of 10-20% for all the staff or closing reception. He said that he would hold a further meeting in a couple of weeks and that he would listen to any alternatives that they could think of.

A follow up meeting was held on 10 June 2011 with all the staff. They suggested that each of them do a four day week. The respondent did not consider this as an appropriate arrangement

and was concerned that if one of his secretaries was covering reception she would not be able to access files quickly should he phone. He believed that this would be the same with other secretaries. He said he would consider their suggestions and decide what he was going to do.

Ultimately he decided to close the reception and make the claimant's position redundant. He notified her of this on 16 June 2011. Her notice period expired on 29 July 2011. On 3 August 2011 she came to the office to collect her redundancy payment. Before she left she gave the respondent a letter which stated that she had already filed a claim with the Employment Appeals Tribunal. There were no discussions between the respondent and the claimant after the meeting of 16 June 2011 and her termination of employment on 29 June 2011.

He did not replace the claimant. He automated the phones and installed a video intercom system in the building. He had not hired any secretarial staff since. The junior solicitor was dismissed by reason of redundancy in February 2012 after refusing to agree to a pay cut. An apprentice solicitor was recruited. In January 2013 the respondent offered the claimant the opportunity to cover an upcoming period of maternity leave of his second secretary. The claimant declined the offer as she had acquired two days' work per week for another solicitor. He offered three days per week to her but she declined this also.

The respondent was cross-examined. The claimant was with the practice longer than his second secretary who was there approximately eight years. The claimant was originally hired to be the partner's secretary. In 2008 she was assigned to reception. She was qualified as a legal secretary. He did not consider the claimant for a secretarial position as there was none available. His second secretary had expertise in family law and debt collection. All the other staff members were there longer. It came down to closing reception or making his second secretary's position redundant. He decided that he did not need the reception. He stated that the practice was losing money in 2011.

During the individual meetings with staff on 30 May 2011 he discussed performance issues with the staff. He told the claimant that he understood that she was carrying out private work during work time. The claimant told him that it was none of his business.

He agreed that he had refused seven days' unpaid leave to the claimant which she had requested in order to go on her honeymoon. He suspended the claimant for three weeks' without pay in January 2011 for taking unauthorised leave. The claimant brought a case to the Rights Commissioner Service. The case was heard on 19 October 2011, after the claimant's dismissal. The Rights Commissioner found in the claimant's favour. He denied that this situation had influenced his decision to dismiss her in the slightest.

The claimant had not voiced any concerns to him about the redundancy prior to her dismissal. He believed all the staff and solicitors got on well. He only considered cutting pay or closing reception. He did not see any other option. He did not seek volunteers for redundancy. Other than conveyancing he was not aware of any other areas the claimant had experience in. He was not aware that the claimant had commenced a legal executive course in 2007.

In answer to the Tribunal the respondent stated that in regard to selection criteria he knew the skills of the secretaries. His second secretary had experience in family law and he had sent her on a debt collection course. The claimant was not given an opportunity to appeal as he was the principal, so there was no one else to appeal to. She did not dispute the decision. He did not ask the claimant about her skills prior to dismissing her. He had decided that he was going to close the reception. The claimant did not have a written contract of employment.

### **Claimant's Case:**

The claimant gave evidence. In 2010 she got engaged. The wedding was held in November 2010. Her husband booked a surprise cruise holiday for their honeymoon. She did not have sufficient leave for the holiday. In August 2010 she filled in a docket to request leave and seven days' unpaid leave for her honeymoon. The respondent refused the application on the grounds that the claimant had already taken unpaid leave and it was only for exceptional circumstances. She had taken unpaid leave earlier in the year in order to undergo eye surgery.

In September 2010 she asked the respondent again if she could take unpaid leave. He said he would come back to her, but he did not. She was very upset about the situation. One day he spoke to her when he phoned the office and wished her well for her wedding and that he would see her when she returned. She believed he had changed his mind regarding her leave application. She received a letter stating that her leave entitlement was five days only. There were a number of emails between them before she went on honeymoon. She felt that the respondent was being unreasonable. On her return to work he called her to a meeting. He imposed a sanction of suspension for three weeks' without pay to be implemented in January 2011 and one less day's annual leave for 2011. She brought a case to the Rights Commissioner Service and an award was made.

She returned to work after her suspension and worked as normal until the meeting in May 2011. She first saw the company's grievance procedure when it was given to her solicitor on 14 June 2011 at a hearing regarding her case for unpaid wages.

She and the second secretary met the respondent jointly on 30 May 2011 prior to the group meeting. He accused the claimant of preparing the papers she served on him in her working hours. She said it was none of his business where it was typed. She said it was not in the workplace and that she had posted it during her lunch. During the group meeting he said that the office was losing money and he was proposing a 10-20% pay cut or that the reception was closed. He said there would be a further meeting to discuss their suggestions.

At the second meeting on 10 June 2011 the staff suggested a four day week. Redundancy was not mentioned at either meeting. He said he was going to close the reception. The claimant believed that she would be redeployed upstairs. She was surprised when he told her that he was making her position redundant. She believed that she was being punished for taking time when she got married. He said it was nothing to do with it.

The claimant commenced a two-year legal executive course in 2007 with two other members of

staff. She completed the first year but did not continue onto the second year.

The claimant gave evidence of her loss and mitigation of loss.

The claimant was cross-examined. She accepted the respondent's decision to close the reception area. She did not dispute the decision. She believed that she should have been redeployed within the practice. She was not the last into the office. She pointed this out at the meeting when she was told she was being dismissed. He said he was closing the reception. She did not say anything else. He gave her a letter of termination of employment.

She believed that the second secretary, who commenced after her, should have been dismissed. The claimant could have carried out her work. She agreed that since 2008 she had not been doing secretarial work to the same extent as her colleague and that her colleague had completed the course which she had started but did not complete. She accepted the redundancy payment.

**Determination:**

The Tribunal considered the evidence given by the parties at the hearing and noted that the respondent when contemplating the dismissal of the claimant established that he no longer required a receptionist. This was the duty being performed by the claimant at that time. In selecting the claimant for redundancy however he failed to consider the other duties that the claimant had performed in the past for the employment and that she was capable of performing the other duties required of a legal secretary or that she had undergone a course in which she had studied aspects of the law that may have had a bearing on her retention in the practice had it been considered. The employer failed to discuss these matters with the claimant before he made the decision to dismiss her. His failure to engage with the claimant on these matters prior to the dismissal or give any or any reasonable consideration to them renders the dismissal unfair. In the circumstances the Tribunal having considered the remedies under the Acts has decided to award the claimant the sum of €18,000.00 in compensation under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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