

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE *-claimant*

UD754/2010

against

EMPLOYER *-respondent*

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms S. Behan B.L.

Members: Mr. G. Andrews
Ms S. Kelly

heard this claim in Limerick on 23rd February and 29th May 2012

Representation:

Claimant: Mr. Norman Fitzgerald solicitor, Purdy Fitzgerald,
Solicitors, Kiltartan House, Forster Street, Galway

Respondent: Ms Lucy Walsh BL instructed by Respondent

Respondent's case:

The Tribunal heard evidence from a witness (FK) from the respondent. She told the Tribunal that the company was set up in 1971 by her father. TM was a partner in the firm. She herself qualified as a solicitor and worked in a multinational company. In 2000 she returned to work in the respondent office. She worked in conveyancing and tax areas. She had never been to court and had done minimal litigation work.

TM retired and JB arrived in as a partner. Another solicitor was AH who mainly worked as an assistant in conveyancing and probate. JB brought work with him when he arrived. It was agreed that JB was to take on an assistant. The witness told the Tribunal that she met the claimant and approved that she be JB's assistant in conveyancing. She could not recall if she interviewed the claimant or if JB had known the claimant prior or if he asked her if she would join the practice.

The respondent had another office in Shannon and a solicitor worked in Shannon for a half day on their respective day.

CR was a legal executive at the time as was MF. The claimant sometimes worked to her on files.

The claimant was not long qualified and so she was closely monitored. When the claimant had meetings with clients JB attended with her.

Regarding closing files the claimant would come to her or to F for guidance regarding the files. She never had an issue with the claimant's performance. There were no client complaints regarding the claimant, no warnings and JB never expressed a negative comment about the claimant.

In 2009 she was due to have her fourth child. Her hours in the office were reduced so she tried to find a solution to reward JB. They could not find a solution so JB decided in May 2009 to leave the partnership. It was a stressful time for her as she was expecting a baby.

The claimant went on sick leave in May 2009. The claimant was to go on maternity leave in June 2009.

She only found out in July when JB was to actually leave the partnership. JB had brought files with him to the practice and she and JB agreed a list of files that he would take with him he also took some conveyancing. JB had a list of the files he was to take and JB gave her a list. She gave all the staff a list of the files that he took. The claimant liaised with JB regarding the handover of files.

She gave the claimant a list of the files and the claimant told her that she could not deal with it as she was on maternity leave. She had given the claimant a list to let her know that even though JB had left her job was still there when she returned. Her assumption was that the claimant would return to the office after her leave.

The witness explained that her knowledge of litigation was poor and that while the claimant was on leave, she employed EW as a replacement for JB. She had nobody that could work on litigation in the office and EW had managed another firm. EW had also the experience of being a partner and a team leader.

She could not put in the hours in the office so another solicitor SK joined in August 2009. SK dealt with commercial conveyancing.

The claimant gave notice of her intention to return to work on 14th December .

In early 2010 the respondent practice took advice from a large firm of business advisors who told the respondent that their cost base was too large. The turn over dropped significantly, a 40% drop in 2008 to 2009 and a further 25% drop in 2009 to 2010.

The witness explained that they had to inform their insurers of JB leaving because of his experience and who was replacing him. The insurance could increase if files were with someone of two year's experience i.e. post qualification experience (PQE). When they renewed their insurance in 2010 TD solicitor was there so they had cover for that contingency.

SK organised a meeting for 15th January 2010, and the witness was on maternity leave however she called in to the meeting. The purpose of the meeting was to explain why they recruited EW and the reasons why. That is the fact that JB left and there was a change of insurance and the downturn in business. They asked the claimant for her proposals as to how her job could be sustained. The claimant was surprised. They wanted to see if the claimant had any suggestions.

She had not made up her mind to make the claimant redundant, she was open to suggestions.

There was another meeting on 20th January 2010, which she was not at. SK reverted to her about the meeting by phone call.

The witness gave evidence as to the allocation of files and the work allocation. She said that EW was managing the litigation department with the help of the claimant as an assistant. She did not see how the claimant, who had two year's experience could do High Court or Circuit court files even with the assistance of counsel.

She had asked for the claimant to put proposals in writing and she did not receive proposals. She and SK could not see how they could justify the claimant's role and it looked as if they would have to make the role redundant. They did not consider EW's role for redundancy as they needed her experience. They sent the claimant a letter dated 05th February 2010 to say her role was redundant.

Claimant's case:

MF worked for the respondent for twenty three years and left in January 2011. She worked in the Shannon office and worked on the reception. FK and (Frank ?) would work in the Shannon office on different afternoons. The claimant worked in the office on Wednesday afternoons and did all areas of work. In June 2009, the claimant went on maternity leave and EW joined in June to take over her role while she was away. EW was supposed to come to the office every Wednesday but did not. MF spoke with EW and SK regarding the claimant's return to work. EW told MF that she had gone through the claimant's e-mails. SK told MF that EW had passed them on to FK who was not happy with the content of the e-mails and that the claimant would not be staying with the respondent.

During cross-examination MF said she was never based in the Limerick office. She said SK had joined the respondent to replace JB. She said SK joined in August 2009 and she left in January 2011. She did not think EW was with the respondent when JB left.

The claimant gave evidence to the Tribunal. The claimant qualified as a Solicitor in 2007. She spent six months doing commercial, six months litigation and six months family law training. She sent her CV to the respondent and was interviewed by JB. On her first day with the respondent she was given files and sent to court. She worked on a floor with JB and his secretary. A lot of their work was done in the secretary's office. The claimant said she was a team player and would attend court unsupervised. Her main role was litigation but she also did some conveyancing, probate and drafting wills. In 2008, the litigation department made €600,000.

In early 2009 the claimant informed the respondent that she was pregnant and that she was due on the 10th July. She received a text message to say JB had left. She had no idea JB was intending to leave the respondent but she knew he was under fierce pressure. FK phoned the claimant and told her the firm was splitting in two, and where did her loyalties lie. FK asked the claimant if she was staying with the respondent or going with JB. She phoned FK back and told her she had a contract with the respondent and gave her notice of intention to return to work. FK asked her to come in and look at the remaining files in the litigation department. The claimant was on maternity leave and her son was unwell and she told FK she could not do so. Later she met FK for coffee and was told not to worry about the files because EW was going through them.

In September she called into the office in Shannon office to say hello. SK was there and the claimant told him she was back on her feet. SK told her to enjoy the rest of her maternity leave.

She returned from her maternity leave on the 15th December 2009. SK told her that she would have to report to EW. She was not happy with this as she felt EW was a comparator. The number of new files had dropped but there was a good system in place and it could be turned around. She was given simple jobs to do and the files she had worked on before her pregnancy were not returned to her. The work was there but she could not access the files.

On the tender documents for a bid, she and EW were ranked as the same in the organisation chart. It was news to her that EW had more experience.

On Monday the 5th February 2010, the claimant was given her files. At 4:30pm she saw FK going into SK's office. She was then called into SK's office where she was told "sorry you are being made redundant". She was given no notice of the meeting, no offer of representation or an agenda. The meeting lasted ten minutes and she was handed a redundancy letter. The letter said the litigation department was being changed and would only need one Solicitor. It said she was not sufficiently qualified or experienced to run the litigation department in the respondent on her own. She was not given a matrix (selection criteria), or offered any alternatives to redundancy. She was not given any opportunity to up-skill or the option to work in another area of the firm. The respondent asked her to sign a waiver. She refused to do so but took the redundancy payment as she had been out of work for six months without pay.

During cross-examination the claimant said she felt JB and she had owned the files equally. She said JB had billed the customers and she just did the work.

(O) JB's secretary had sent the claimant a text to say she had moved with JB. It was a shock when the firm split. The claimant did not speak to JB about a job with him. She was very fond of her job with the respondent.

The claimant said the decision to make her redundant was made while she was on maternity leave. When she returned to work the atmosphere was frosty and she took notes.

The claimant was nearly sure she had left before MF told her about the e-mail conversation with SK.

At a meeting on the 15th January 2010, it was not said it was difficult to justify her position. She was "put on the spot" at that meeting. It was her belief that the firm was in a difficult position and she was asked to come up with ideas to save it. She was unaware of any deadline to reply and did not set out anything in writing. Had she known she was to come up with proposals to save her own job, she would have done so. She had never attended any of the three meetings thinking she had to come up with proposals.

She only contacted her legal adviser after she had received notice of redundancy.

She knew the workload was down. EW had replaced her. The claimant was there first and longest. EW was the other person in the litigation department. She does not accept EW replaced JB.

During re-examination the claimant said she was never given copies of the notes of the three meetings. The claimant did not accept she only billed €40,000. She worked on the files with JB.

The Tribunal heard evidence from JB. JB worked as a Solicitor with a number of firms before he joined the respondent. He did everything, 30% conveyancing, 30% litigation and 30% family law. He joined the respondent in 2006 and when he started, the work was similar to what he had done in the other firms. The roles were then defined and he took on the litigation department. He interviewed the claimant and she assisted him in the litigation department. She was fantastic and JB could not fault her. He delegated a huge amount of work to the claimant. The litigation department was so busy, they worked as a team.

JB said in his view, the claimant was more than capable of running the litigation department. She had a very good knowledge of computers and case law.

Under cross-examination JB said when he left the firm he took 75% of the litigation files with him. It was his plan to take the claimant with him but the costs of setting up a new practice held him back. JB had an apprentice Solicitor working with him who had just qualified.

During his time with the respondent he was working huge hours and relied on the claimant. She was so good at her job and kept coming to him about getting extra work. The claimant reported to him, she was excellent.

The claimant did way in excess of the €40,000 billed. The litigation department was doing so well they were not looking at the billing. Other areas of the firm were looking at costs but they were doing so well.

In 2009, JB was of the view that they had a very successful practice and he wanted to pare it back. He could not have done the litigation work on his own.

Determination:

The Respondent sought to terminate the employment of the Claimant in circumstances where the Respondent contended that it was necessary for the reorganisation and restructuring of their firm. In a letter of the 5th February 2012 handed to the Claimant by the Respondent, it was stated that the Claimant was not sufficiently qualified or experienced enough to run a litigation department on her own. This evidence was directly and compellingly rebutted in the Tribunal's opinion by JB, Solicitor with whom the Claimant worked closely prior to his departure. He regarded the Claimant as a very capable solicitor, whose work he described as being excellent and in whose opinion was well capable of running the litigation department on her own.

The Tribunal is further of the view that there was little exploration of alternative employment within the firm for the Claimant, and little or no discussion of changing the terms of the Claimant's employment, such as reducing her number of working hours or her pay.

While the meeting of the 5th February 2012 was preceded by an exchange of letters, correspondence and meetings, the final meeting occurred without notice to the Claimant or the opportunity of representation. Furthermore she was not advised as to whether there was any appeal procedure available to her.

The Tribunal finds it unsatisfactory that there was an onus of responsibility placed on the Claimant in relation to proposals she may have for the future of the firm. There was also a lack of regard for her personal difficult circumstances. In all of the circumstances this was an

unreasonable approach on behalf of the employer.

Therefore the Tribunal finds that the Claimant was unfairly dismissed and awards her the sum of €14,500.00, under the Unfair Dismissals Acts, 1977 To 2007. This is in addition to any previous payments received by her.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)