

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

UD1698/2011

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

EMPLOYER

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. L. O’Cathain

Members: Ms. M. Sweeney  
Mr. J. Flavin

heard this appeal at Cork on 7th March 2013

Representation:

Appellant:

Respondent:

#### **Respondent’s case**

The respondent provided and maintained plants to businesses on a contract basis. The appellant’s job was to maintain these plants (watering and dusting etc.) on a scheduled basis. Her employment began on 23<sup>rd</sup> April 2008 and ran until she was dismissed by way of redundancy on 28<sup>th</sup> April 2010. Initially the appellant was paid €300.00 per week but this was reduced was reduced to €250.00 per week in accordance with a reduction in her weekly hours for eight months prior to her redundancy. The appellant was paid €1,200.00 in respect of a redundancy lump sum.

A director of the respondent (DM) took on the work that the appellant had previously performed. The respondent’s turnover was severely reduced in 2009 and 2010 due to the loss of some contracts and the reduction in fees for others. DM continued to employ the appellant for as long as he could but eventually found that he had no alternative but to make

her redundant and subsume her role into his own.

Shortly before making the appellant redundant DM had decided to diversify and opened a garden centre and café. To this end he subsequently employed his sister, who had horticultural experience and qualifications. DM's sister also helped out by sometimes performing what used to be the appellant's job but was primarily engaged for her qualifications/experience and her business acumen. Ultimately the garden centre and café were unsuccessful and DM's sister was let go after 18 months. The garden centre closed and the café is now leased to a third party. DM continues to run the business of the respondent but has no employees.

DM did not offer the position filled by his sister to the appellant because he knew she did not have the required experience or qualifications. Nor did he offer her a position in the café or garden centre shop as she had no relevant experience as far as he was aware.

### **Appellant's case**

On her return to the warehouse having completed her day's work the appellant was told by DM that she was being let go and that he was taking over her job. She was given notice of two weeks and was not required to work but would be paid for that time. The appellant later realised that she was two weeks short of qualifying for a redundancy lump sum and approached DM about this. DM agreed to allow the appellant to take holidays due to her which pushed back her date of termination of employment and thereby entitled her to a redundancy lump sum. The claimant accepted this and cashed the cheque for €1,200.00.

However, within a week or two of being made redundant the appellant observed DM's sister carrying out some of what used to be the appellant's work. The appellant then decided to follow DM's sister over the following few weeks in order to see if she was carrying out any of her other jobs and found that she was. A former colleague of the appellant (PB) also told her that DM's sister was doing the appellant's job.

The appellant contended that her job was not redundant but that she had been unfairly dismissed so that DM's sister could be employed in her place.

PB gave evidence that as far as she was concerned DM's sister carried out the appellant's job after the appellant was dismissed. She never worked with DM's sister but knew that DM had not got the time to do the job himself and also stated that DM once phoned her looking for directions to a customer's premises and she asked him had he not been there before.

As far as PB was aware DM's sister did not carry out any function within the respondent other than the appellant's old job but told the Tribunal that she herself was only present in the warehouse for 10 or 15 minutes at the beginning and end of each shift.

### **Determination**

Having carefully considered the evidence adduced at the hearing the Tribunal is satisfied that a

genuine redundancy situation existed when the appellant was made redundant and that she was fairly selected for redundancy on the basis of her having the least amount of service with the respondent. The respondent had no suitable alternative employment to offer to the appellant.

The respondent employed his sister in a business advisory/qualified horticulturist role subsequent to the termination of the appellant's employment. The respondent then carried out the appellant's role and was assisted, to a small degree, in this by his sister.

The Tribunal upholds the decision of the Rights Commissioner Ref: r-097521-ud-10MMG and finds that the appellant was fairly dismissed by way of redundancy.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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