

**PRELIMINARY DETERMINATION**  
**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM OF:**

**CASE NO.**

EMPLOYEE

- claimant

RP2727/2011

UD2127/2011

**against**

EMPLOYER - respondent

**under**

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**  
**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr. L. Tobin  
Mr. J. Dorney

heard this claim at Wicklow on 29th April 2013.

**Representation:**

Claimant:

Respondent:

The determination of the Tribunal was as follows:-

**Respondent's Case:**

EW is a trade union official who was contacted by HR of the respondent company to represent the claimant at a meeting on 28<sup>th</sup> March 2011. The claimant had been unwell for some time and had long periods of sick leave. HR met the claimant to discuss her illness and the effect it was having on her work.

The claimant worked in a movie rental store G in Co. Wicklow. A popcorn machine had been introduced into the store and the chemicals used in the popcorn were adversely affecting the claimant's health.

EW discussed options with her such as transferring to another store, if the company was to insist on her returning to work, the possibility of her not being able to return to work and how a case for constructive dismissal works, whereby the onus of proof shifts to the employee. EW

could not advise on a personal injury claim. The claimant brought up the option of voluntary redundancy. EW explained that the respondent was not currently offering voluntary redundancy packages but he agreed to speak to the respondent about such a package. He advised the claimant that if she were to apply for voluntary redundancy she would have to sign a disclaimer. EW and the claimant parted for the claimant to consider her options. Both EW and the claimant had at least five or six conversations over a six week period.

The claimant agreed to move to another store S on a temporary basis. Subsequently the claimant was unhappy with hours of work there. She decided to return to the original store.

The claimant decided to discuss the option of voluntary redundancy with EW. She had some financial difficulties at the time. Again EW discussed the likelihood that she would have to sign a disclaimer which prohibited her taking other claims. Having given this option some consideration the claimant decided to accept voluntary redundancy. EW engaged with the respondent and indicated that the claimant wished to avail of a voluntary redundancy package.

KA is HR Manager since 1980. She had many conversations with the claimant in the period November 2010 to March 2011. She discussed suitable alternative options with the claimant. The respondent was not in a position to remove that popcorn machine from the store but was agreeable to repositioning the machine.

EW spoke to KA on 6<sup>th</sup> May 2011 and indicated that the claimant wished to take voluntary redundancy. KA emailed a copy of the disclaimer form to EW and also to the claimant.

The claimant asked KA to meet her in a café at 9.30 a.m. on 12<sup>th</sup> May 2011. KA asked the claimant to sign the RP50 redundancy form and a discharge form to release the monies being offered to the claimant. The claimant's employment was due to be terminated by reason of redundancy effective from 3<sup>rd</sup> June 2011. KA enclosed a cheque with a letter of even date for €6,617.47 which included the claimant's statutory redundancy payment and an additional ex gratia payment. The letter stated that the final payments were in full and final settlement of all outstanding claims arising out of the claimant's contract. All of her monies owed to the claimant were paid into her bank account.

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

The claimant commenced employment in February 2002 as a senior customer service representative. She progressed to the position of Assistant Manager in store G. She had a great relationship with the company and loved her job.

Towards the end of August 2010 a popcorn machine was installed into the store. Shortly afterwards the claimant began experiencing breathing problems and had to visit her GP. She then developed a skin condition. She had to be referred to a consultant and the company paid for all her medical expenses. She raised her concerns with CB, District Manager and KA.

The claimant was absent from work on sick leave in the period September 2010 until February 2011. Upon her return she was sent to another store for training on a new system.

On 28<sup>th</sup> March 2011 the company asked to meet her. EW was also invited to the meeting. They met off site. EW and the claimant met in one room and KA and CB met in another room. EW

mentioned moving to store S on a temporary basis to see if her health would improve. That store did not have a popcorn machine. At no time during the course of the meeting did she discuss taking a personal injury claim or bringing a case for constructive dismissal. The claimant agreed to move to store S but she was unhappy there and felt isolated and returned to her own store. She subsequently spoke to EW two or three times after that meeting.

On 6<sup>th</sup> May 2011 the claimant received a telephone call from KA who offered her voluntary redundancy. This was the first time she had heard about voluntary redundancy. She subsequently spoke to EW about the offer of voluntary redundancy. EW and the claimant had discussed a discharge form. EW told her if she signed this form she would be signing her life away.

In or around the 10<sup>th</sup> or 11<sup>th</sup> May 2011 KA telephoned the claimant and asked her to call to the office to sign an RP50 redundancy form and a disclaimer form. The disclaimer form was emailed to her on 10<sup>th</sup> May 2011. KA arranged to meet the claimant on 12<sup>th</sup> May 2011. The claimant indicated that she had a hospital appointment that day but asked KA to meet her in a café in the vicinity.

The forms were presented to her for signature and the claimant signed them. She was stressed at the time and felt let down by the company and angry and was left with no option but to sign the forms. She signed the disclaimer form but was not thinking straight. She had worked for the company for eight years and felt the company wanted to pay her off.

### **Preliminary Determination:**

By consent on the application of the respondent the Tribunal gave consideration to the issue as to whether it had jurisdiction to hear the claim the submission of the respondent being that the claimant in executing a form of discharge had waived her rights to bring such a claim.

The Tribunal has carefully considered the evidence adduced by the parties which is set out herein and the respective submissions made.

It is found and determined

1. That the claimant agreed and authorised an independent third party to represent her interests in any contact with the respondent in respect of her employment. It is proposed to refer to this person hereinafter as her “agent”.
2. That this agent at all times acted under her control and direction in respect of her engagement with the respondent.
3. That the various advices given by the agent to her in respect of this engagement were in the circumstances of the case adequate and were at all times understood by her.
4. That the process engaged in which resulted in the issue of the form of discharge referred to was conducted in a fair and proper manner and was freely and voluntarily entered into by the claimant from its outset to its conclusion.
5. That the form of discharge, its contents and its import were fully understood by the

claimant prior to its execution by her.

It is therefore found and determined (a) that the claimant waived her rights to any claim that she may have had in respect of her employment, (b) that the Tribunal has no jurisdiction therefore to hear any such claim and (c) that the claim is therefore dismissed and the Tribunal so determines.

The claims under the Unfair Dismissals Acts, 1977 to 2007 and the Redundancy Payments Acts, 1967 to 2007 fail.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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