

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE,

CASE NO.  
UD206/2011

against

EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. F. Moloney  
Ms. P. Ni Shéaghda

heard this claim in Dublin on 22nd June 2012

Representation:

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Claimant(s):

Respondent(s):

The determination of the Tribunal was as follows:-

An unfair dismissal claim was lodged in respect of an employment which commenced in April 2005 and ended in late June 2010.

**Grounds of Claim**

In the grounds of claim it was stated that the claimant had commenced in the role of Environmental Compliance Officer but that the role had evolved through promotion to include, at various times, management of Civic Amenity Sites, Contract and Site Management, Facility Manager for Ballymount, transport co-ordination, environmental management on all Dublin sites and the Midlands Region and commercial tendering. The claimant's job title/role at the date of the termination of employment was Regional Environmental Manager.

On 28 April 2010 the claimant was informed by her line manager that he had been informed by

the General Manager of the Respondent company that the Compliance department had been targeted for redundancies, that both he and she were in danger of being made redundant and that the General Manager and the Human Resource Manager would be requesting a meeting with her later that day.

On 29 April 2010, during the course of a meeting with the General Manager and the Human Resource Manager the claimant was informed that the Compliance structure was being flattened and that her role would cease to exist.

On 26 May 2010 the claimant was furnished with a formal notice of redundancy and a form RP50.

GK [former managing director] gave evidence that the company decided at the meeting in a hotel in county Louth on the 23<sup>rd</sup> April 2010 that the decision was taken to dismiss the claimant and another employee by reason of redundancy. GK said he was sure of this and that “the decision was made at the [named hotel]. Their names were on the board”

Further or in the alternative, the claimant believed that she had been unfairly selected for redundancy and that fair procedures had not been applied.

In those circumstances the claimant believed that the termination of her employment constituted an unfair dismissal and she sought reinstatement.

#### Grounds of Defence

It was contended that on 26 June 2010 the claimant had been made redundant by the respondent from her employment as part of a company restructuring which justified the termination of her contract such that she had no claim against the respondent under unfair dismissal legislation.

It was accepted that the claimant had commenced employment with the respondent in the position of Regional Environment Manager. Following an extensive review of the business, the decision was made, at a meeting in a hotel in County Louth on the 23<sup>rd</sup> April 2010, to restructure the Compliance Department due to a decline in turnover and ongoing losses coupled with a reduction in waste tonnage processed due to the loss of contracts. As a result, the company proposed to implement a new structure which would affect the Compliance function in that a number of roles including the role of Regional Environmental Manager would cease to exist.

The claimant was the only person who worked in the role of Regional Environment Manager and, following her departure, the role ceased to exist.

The claimant was formally notified of the potential redundancy on 29 April 2010 and, following a lengthy consultation process which involved several meetings, she was advised on 26 May (2010) that her position was being made redundant and she was given notice that this would come into effect on 26 June 2010. The respondent gave evidence that the claimant did not appeal the decision.

#### **Determination:**

Having considered the totality of the evidence the Tribunal is not satisfied that the respondent acted fairly and reasonably when addressing the need to reduce the number of employees. When an employer is making an employee redundant, while retaining other employees, the selection criteria being used should be objectively applied in a fair manner. While there are no hard and fast rules as to what constitutes the criteria to be adopted nevertheless the criteria adopted will come under close scrutiny if an employee claims that he/she was unfairly selected for redundancy. The employer must follow the agreed procedure when making the selection. Where there is no agreed procedure in relation to selection for redundancy, as in this case, then the employer must act fairly and reasonably.

The Tribunal noted that the respondent kept taking away parts of the claimant's job and that interviewing had taken place on 12 May 2010 for an alternative position within the company for which a job specification was not formulated until 14 May 2010. The Tribunal finds this most surprising. The Tribunal also takes the view that the claimant could have done a health-and-safety manager job which ultimately took on a construction-related title given that she had no construction-related qualification. The respondent had tried to row back and disadvantage the claimant.

The Tribunal does not accept that the Respondent acted fairly and reasonably in this case for the following reasons:

1. the decision to make the claimant redundant was taken at a meeting in a hotel in County Louth on the 23<sup>rd</sup> April 2010. The chairman of the company (SD) attended this meeting;
2. there was no serious or worthwhile consultation with the claimant prior to making her redundant. The consultation should be real and substantial. The decision to make the claimant's position redundant was taken before the consultation process commenced;
3. no suitable or substantial consideration was given to alternatives to dismissing the claimant by reason of redundancy;
4. there was no worthwhile discussion in relation to the criteria used for selecting the claimant. The selection criteria should apply to all employees working in the same area as the claimant but should also consider other positions which the claimant is capable of doing.

The Tribunal finds that the claimant was unfairly selected for redundancy and is satisfied that the respondent has contravened Section 6 (3) of the Unfair Dismissals Act 1977 which states:

'Without prejudice to the generality of subsection (1) of this section, if an employee was dismissed due to redundancy but the circumstances constituting the redundancy applied equally to one or more other employees in similar employment with the same employer who have not been dismissed, and either—

- (a) the selection of that employee for dismissal resulted wholly or mainly from one or more of the matters specified in subsection (2) of this section or another matter that would not be a ground justifying dismissal, or
- (b) he was selected for dismissal in contravention of a procedure (being a procedure that has been agreed upon by or on behalf of the employer and by the employee or a trade union, or an excepted body under the Trade Union Acts, 1941 and 1971, representing him or

has been established by the custom and practice of the employment concerned) relating to redundancy and there were no special reasons justifying a departure from that procedure,

then the dismissal shall be deemed, for the purposes of this Act, to be an unfair dismissal.’

Employers must act reasonably in taking a decision to dismiss an employee on the grounds of redundancy. Indeed, Section 5 of the Unfair Dismissals (Amendment) Act, 1993, provides that the reasonableness of the employer’s conduct is now an essential factor to be considered in the context of all dismissals. Section 5, inter alia, stipulates that:

*“.....in determining if a dismissal is an unfair dismissal, regard may be had.....to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal”*

The fact that the claimant did not appeal the dismissal was considered by the Tribunal but the Tribunal notes that the appeal would have to be made to SD, the chairman of the Company. The Tribunal further notes that SD was at the meeting which took the decision to dismiss the claimant. Therefore, it would be entirely inappropriate, and contrary to fair procedures, that he should hear the appeal.

The Tribunal is unanimous in finding, under the Unfair Dismissals Acts, 1977 to 2007, that the claimant was unfairly dismissed because she was unfairly selected for redundancy. The Tribunal deems compensation to be the most appropriate remedy and awards the claimant fifty thousand euro (€50,000.00) under the said legislation. For the avoidance of doubt this award is in addition to all payments already received by her in connection with the termination of her employment including a redundancy payment of €10,014.00 paid to the claimant under the Redundancy Payments Acts, 1967 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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