

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

UD1043/2007

against

Employer

-respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony BL

Members: Mr. P. Casey
Mr. D. McEvoy

heard these claims in Cork on 17 June 2008 and 9 October 2008

Representation:

Claimant :

Mr. Eoin Clifford BL instructed by Ms Elaine O'Sullivan,
Martin A Harvey & Co, Solicitors, Parliament House
9/10 Georges Quay, Cork

Respondent :

Mr. Jim Reaney (IBEC) instructed by Ms Paula O'Hanlon, IBEC,
Mid-West Region, Gardner House, Bank Place, Charlotte Quay, Limerick

The determination of the Tribunal was as follows:-

Prior to the hearing the claimant's solicitor gave notice to the respondent of the intention to include a claim for redundancy. FORM T1-A was accordingly amended.

Summary of the Evidence

The claimant commenced employment with the former owner (FO) of the business in April 1982 when it was a small family-run supermarket employing 20 employees. Initially she worked on the check-out. As the business grew she progressed within it. By 1990 it had fifty employees. From this time on she was responsible for recruiting staff, opening and closing the store when the owner was

away and she was second-in-command to the owner. The respondent moved to a new store in September 2004 and the number of employees grew to between ninety and a hundred. From then on the claimant was responsible for some of the HR/personnel function, managing the staff and walking the floor giving them instructions; she did not work behind the checkouts during this time. She had been out of work ill for most of the 2002 and was paid throughout her absence.

In March 2005 the owner's son became ill and a new manager (NM) was recruited to replace him in January 2006. The claimant worked alongside NM and they both reported to FO. The business was sold to the respondent in December 2006. FO had earlier told the claimant about his intention to sell and assured her that everything, including all positions, would remain the same.

The purchase of FO's business brought the number of the respondent's supermarkets to ten. On 15 December the group's Human Resource & Operations Director (hereinafter HRG) and its Managing Director (MD) had a "meet and greet meeting" with the staff and assured them that their jobs were secure. The respondent took over the business in February 2007. At a series of meetings in mid February the new management team was announced. The claimant was astounded that her name was not among them. Members of staff commented on this to her. The claimant told HRG that she had been part of the management team and asked her what her position would be. HRG had no time to discuss the matter with the claimant that day and told her that it would be sorted. It was the respondent's evidence that they were introducing the four new members of management who were replacing the four members of management (FO, his two sons and daughter) who were leaving. NM who had been store manager in FO's time was to become general manager (hereafter GM) under the respondent. These five were identified as the key-holders under the respondent. Some of the managers were only there on a temporary basis to help with the take-over and revamp of the store.

Some time later HRG and MD met with the claimant to discuss her role. FO had told them that the claimant's main function was to oversee the checkouts/customer service and she had also done the hiring and firing and was a key member of staff. While the claimant had carried out some HR duties under FO he had mainly availed of the services of a HR consultant. It was the claimant's evidence that it was she who had considered the application forms to decide who should be employed. They went through the "quad" system with her, which is the respondent's organisational structure for the day-to-day running of the business. This system is in operation in the respondent's nine other stores and facilitates a high standard of accountability and reporting. It comprises four segments, each having clusters of responsibility. The claimant did not want the HR position because in the respondent's system it is office based and she did not want to be stuck in an office. This suited the respondent who had wanted the hiring and firing to be done in a more structured way. HRG and MD saw a role for the claimant in customer service as it was the closest to her role under FO and she was acquainted with all the customers. They went through the customer service segment of the quad with her and she was happy with it. It was the claimant's evidence that she agreed to this at the time because she wanted the transfer to go smoothly. The claimant had also agreed, on a temporary basis, to do the wages, which had previously been done by a member of FO's family.

It was the claimant's evidence that in a typical day with FO she had checked the rosters to establish if anyone was absent from the various departments; went around to the different departments to see if they were "okay for staff"; helped at checkouts and did whatever needed to be done but she had never worked on the tills. According to GM, who had worked with the claimant under FO for around a year prior to the take-over, the claimant had done a bit of everything: she signed orders, did check-ins, covered the cash office, did the wages when FO's daughter was absent,

covered for the checkout supervisor, on Thursdays and Fridays she worked around the checkouts ensuring baskets were available as well as interacting with the customers and she had hired the staff before he came; he had been interviewed but not by the claimant. Under the respondent the claimant's duties included customer feedback, test purchases, out of stocks, shorts and overs, customer interaction, queue management, seasonal events, innovation and customer spend. The checkout supervisor is part of the quad management system. "Walking the shop floor" was listed as part of the claimant's former duties and in the respondent's system this is formalised under the segment "out of stocks".

The claimant did not submit an application for the position of part-time administrator/HR person when it had been advertised internally around March/April 2007. Following interviews DS, who had been recruited by the claimant during the FO's time, was appointed to the position. The claimant's name was not included in the list of the members of staff who could sign for deliveries although she had formerly done so. This list included the management team as well as the backstore-man. In April 2007 the checkout supervisor, who had reported to the claimant, resigned for health reasons and the claimant took on her duties which included making out the rosters, doing test purchases and voids. The supervisor was not replaced and she continued doing the checkout supervision and wages until June. The claimant felt that she had been demoted. It was the respondent's evidence that these latter duties formed 20% of the customer services manager's function and that the customer services manager was an important part of the management team. During the claimant's subsequent absence from mid June 2007 the respondent recruited a temporary checkout supervisor because of the importance of the function for the customers; the respondent would not recruit a customer service manager on a temporary basis.

GM and an assistant manager (who worked with the respondent for a number of months during the re-vamp of the store) met with the claimant on Friday, 15 June 2007. It was the claimant's evidence that the assistant manager had told her that while she was used to doing things FO's way she would now have to do it the respondent's way. The assistant manager denied ever making this statement. The assistant manager told the claimant that from the following Monday morning she was to take a float and go behind the customer service checkout and she would be responsible for all customer service duties as well as looking after checkouts and doing refunds. When she told them that she had not worked the tills before the assistant manager told her everyone has to learn. The claimant was too upset to object. When she asked about doing the wages he told her to do them the following week and that they would see after that. She did not want to break down in front of the two managers and she left the room and the store; it was her finish time at that stage anyway. It was the respondent's evidence that checkout staff had been calling on the other managers throughout the day to do refunds and voids and that the purpose of the 15 June meeting was to remind the claimant that these were part of her duties as customer service manager. They went through the customer service quad with the claimant and told her that retraining was available. The claimant did not appear to them to be upset and both managers believed that it had been a positive meeting. Minutes were taken at the meeting but the claimant had not signed them because she had not returned to work thereafter. GM could not understand why taking a float and going behind the customer service desk made the claimant think she was demoted; in the respondent's stores all the managers take a float and help at a till when it is very busy.

The claimant never returned to work after the 15 June meeting. From the following Monday she submitted medical certificates stating that she was suffering from stress. Attempts to get the claimant to meet the respondent or go to the company doctor over the following weeks failed because the claimant was unwell but she ultimately did attend the company doctor in late

August. On 11 September he reported that both he and the claimant's doctor agreed that she was suffering from work related stress. The claimant received three weeks' sick pay during her absence.

HRG met with the claimant on a one to one basis at a venue outside of the store on 4 October 2007 to reassure her, let her know that her job was still there and to get her back to work. The claimant told HRG how she felt about the whole situation and that she believed that she was a checkout supervisor because that person had not been replaced. HRG clarified to her that she was customer service manager and as such was an important part of the management team. She asked the claimant to return as soon as she was well enough. At the meeting the claimant did not in any way indicate to HRG that she would not be returning to work. It was the claimant's evidence that this was first time her being a member of management was mentioned.

HRG was expecting the claimant back shortly after their meeting of 4 October and was surprised around a week later to receive a letter from the claimant's solicitor referring to the respondent's unfair diminution of the claimant's position. HRG did not respond to the claimant's solicitor but by letter dated 18 October 2007 she confirmed the contents of their discussion, at the 4 October meeting, to the claimant. The claimant agreed that HRG's letter of 18 October clarified the position and contained reassurance that she was a member of management but she still believed that she was a customer service supervisor. The claimant confirmed that she was upset because she was no longer seen as a member of the management team by the staff. The claimant agreed in cross-examination that in the "Starters and Leavers Form" and the "Induction Checklist" she was referred to as "HRG manager" in the former and as "management" in the latter. These forms had been completed after the take-over because employee files were not available at the time of the take-over. The claimant confirmed in her evidence that the respondent had gone through the duties of the customer service role in the quad with her.

It was MD's evidence that the claimant was well aware of her role on leaving the meeting in late February. She had played a crucial role in the locality and is missed in the store. The respondent's position was that the claimant's position was still available for her.

Determination

Following the take-over of the business the respondent imposed its operational model on the business. This resulted in some change to the claimant's duties. Whilst the claimant had played an important role in his business under the former owner's (FO's) regime she did not have a management title. It was common case that at their meeting in or around late February 2007 the claimant indicated to the respondent (HRG and MD) that she did not want the HR position. From both HRG's and the claimant's evidence the Tribunal is satisfied that the claimant then accepted the customer service role. Accordingly, the Tribunal finds that there was not a unilateral change to the claimant's contract of employment.

The customer service role was closest to the role the claimant had held with the former owner. Whilst the Tribunal accepts that in this role the claimant was, as part of her function, performing duties that had formerly been performed by the checkout supervisor, who had reported to her, the evidence was that this latter formed only around 20% of her role. This re-organisation of duties flowed from the new business model, under which the role of check-out supervisor is incorporated into the customer service management function. The Tribunal finds that this did not constitute a demotion for the claimant. The Tribunal further notes, on this issue, that the claimant's level

of remuneration remained at the same level after the take-over.

The claimant failed to communicate any dissatisfaction with her new role to the respondent either at the meetings in or around late February and 15 June 2007 or to HRG or MD on their regular visits to the store over the months following the take-over. Nor did she, although having experience in the HR role, invoke the grievance procedure. Whilst the respondent was aware from early in the claimant's absence that she was suffering from stress and learned in late August or early September that this was work-related stress, it was only at the meeting of 4 October 2007 that the respondent became aware for the first time that the cause of the claimant's stress was her belief that she was no longer a member of the management team. The Tribunal accepts that at that meeting HR sought to reassure her and confirmed to her that she was customer service manager, which constituted an important part of the management team. While the claimant accepted that this reassurance as to her status had been given to her she nonetheless did not accept it but failed to communicate this to HRG. HRG was expecting the claimant to return to work shortly after their meeting. The Tribunal is satisfied that the claimant's problem was one of perception and that her failure to adequately communicate her dissatisfaction to the respondent did not afford the respondent the opportunity to deal with her problem.

Having considered all the evidence the Tribunal finds that the claimant failed to discharge the onus of showing that the respondent was guilty of either (a) a significant breach going to the root of the contract of employment or that it no longer intended to be bound by one or more of the essential terms of the contract, entitling her to terminate her contract, or (b) that because of the respondent's conduct it was reasonable for her to resign. Accordingly, the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Whilst there was some re-organisation of the claimant's duties the Tribunal finds that she was offered a reasonable alternative but did not accept it. For this reason the claim under the Redundancy Acts 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)