

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD693/2008

- **claimant**

against

Employer - **respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr K. Buckley

Members: Mr D. Hegarty
Mr J. McDonnell

heard this claim at Cork on 5th February 2009

Representation:

Claimant :

Ms Emma Barry, B.L., instructed by O'Shea Byrne & Company, Solicitors,
60 Main Street, Kinsale Road, Co. Cork

Respondent :

Mr Eoin Clifford, B.L., instructed by Meagher, Solicitors, 8 Exchange Place,
IFSC, Dublin 1

The determination of the Tribunal was as follows:-

Respondent's case:

The Tribunal heard evidence from the head of finance. A number of businesses including that of the respondent originated from XXXX. The respondent is a property development and investment company which started operating in 2006. There was a severe downturn in business in 2008. The financial year ran from October to September. In December 2007 they were operating behind budget. Prior to the claimant being made redundant there were eleven employees. Three areas had specialised staff : (1) Planning had surveyors; (2) Procurement had engineers and surveyors and (3) Operations and Finance where witness was employed in addition to accounting staff and the officemanager who reported to the managing director. The role of office manager was looking after meetings, general office duties, web site and general office

support plus marketing. Witness recommended to address the cost base and the one role that was luxury that was the office manager, the claimant's role. A lot of the duties could be spread out and some volunteered to carry out their own functions such as filing. The focus was on sustaining the business. They had to make difficult decisions and make redundancies. In the finance area the staff were reduced from three to two and a decision was made not to replace staff. Later that year in 2008 all roles were made redundant and all the remaining staff including witness had to re-interview for his job. The company is still operating in difficult circumstances.

In cross-examination witness stated that the decision to dismiss the claimant was made on 22nd February 2008. She was told she would be paid one month's salary tax free to allow her time to get other work. There was not alternative to offer her in the company. The claimant had an accident at work where she fell and the respondent agreed to pay for a number of physiotherapy sessions. The claimant being asked to sign a form was part of the standard process. The role of office manager was not subsequently advertised.

In answer to questions from Tribunal members witness could not comment on whether the claimant was afforded the opportunity to seek independent advice prior to signing the Form of Acceptance. The claimant was not allowed the time to show the form to anybody or to make a copy. The person involved in this process on behalf of the respondent was not present at the hearing.

The Tribunal also heard evidence from the head of human resources. The respondent is part of XXXX and XXXX are shareholders. The claimant was the first employee to be recruited. When the claimant's employment was being terminated he advised the Director, Mr H that she had no statutory entitlement to redundancy. When he enquired there was no alternative employment to offer the claimant. He advised in relation to an ex-gratia payment provided that a waiver was signed. This was a standard form used by many companies. Witness had worked in a number of companies and an ex-gratia payment was only given if the waiver was signed. He was aware that the claimant had slipped in the landlord's part of the premises and without admission of liability he advised to pay for a number of physiotherapy sessions.

There were eleven employees and they had to save money. The claimant's role was a luxury in the good times and could not now be sustained. He advised that the director should meet with the claimant and get her to sign the waiver form. On 27th February 2008 she stated she would seek independent legal advice and the form was not signed. In September/October 2007 the decision was taken that the claimant had to be made redundant in February 2008. The lady who was the accounts assistant left in May and was not replaced. The part-qualified accountant left and she was replaced and that post is still in existence. The nine positions were no longer sustainable and five would go forward in the new roles to keep the place ticking over. The director declined to apply for one of the roles and in November 2008 his employment was terminated.

In cross-examination witness stated that while he advised that the claimant should get a copy of the letter confirming the amount of her redundancy payment, he had no idea why she did not get it and he apologised if she did not receive it. The claimant's role was not advertised after she was made redundant.

In answer to questions from Tribunal members witness stated that the decision was taken to make the claimant's role redundant and there was no alternative. He could not verify if the claimant was asked to sign the form of acceptance on the spot.

Claimant's case:

The claimant in her evidence stated that she commenced her employment in May 2006. It was a very good place to work and she got on very well. It was not excessively busy but constant. In December 2007 she had an accident at work when she slipped. On the 22nd February 2008 she went in to the meeting and was told she was no longer needed. She was given the option to go or work her notice and she said she would work the weeks notice. She was told she would get a months pay tax free. She was upset. On 27th February she did not have anything in writing. She asked for the terms of her redundancy in writing and at 12.30 she was called in to the office by the Director and he stated he would sign the cheque but only if she signed the letter, as he was going away for a few days. Despite having been told she could stay and work her notice she was told to go that day. She was also told she should not copy the terms of acceptance and the claimant was not sure of the implications. She went to the boardroom to read the letter and the Director stood outside the door. This was very distressing and upsetting. She was made to feel that unless she signed she would not get the money. She felt she was treated very unfairly.

The 22nd February 2008 was the first she heard of being made redundant. She and the Director met and she thought she was going to discuss work. She was not given the option to work a three day week, the decision was already made. Part of her role was to co-ordinate the web page. Her job is still there and other people are doing it.

In cross-examination witness stated that when she was made redundant the work on the web page had not finished and she was the go-between with the respondent and the web company. The fact that the Director was not going to be in the office for the rest of the week she felt there should have been someone else available in the circumstances of her being made redundant. Following the accident she had physiotherapy sessions and was then made redundant out of the blue.

In answer to questions from Tribunal members witness stated that she did not receive the letter showing the figure for the ex-gratia payment. There was never a problem with her work performance. Since being made redundant there has been a downturn but at the time she was called to the meeting the business was still buoyant.

Determination:

The Tribunal is satisfied that a genuine redundancy situation existed but the treatment afforded to the claimant was procedurally unacceptable. The claimant is awarded the sum of €5,000 under the Unfair Dismissals Acts, 1977 to 2007

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

