

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – appellant

CASE NO.
UD1640/2009

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

EMPLOYEE
V
EMPLOYER – respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr S Mahon

Members Mr P Pierson
Ms H Henry

heard this appeal at Carrick-On-Shannon on 24th February 2010

Representation:

Appellant(s): In person

Respondent(s): Ms Maeve McElwee
IBEC
Confederation House, 84/86 Lower Baggot Street, Dublin 2

This case came before the Tribunal by way of an employee appealing the recommendation of a Rights Commissioner ref: (r-072774-ud-08/SR).

The determination of the Tribunal was as follows:

Preliminary Matter:

At the outset of the hearing the claimant applied to amend the Form T1B. Her employment ended on the 24th of June 2008 and not the 23rd of July 2007. There was no objection from the respondent's representative to the amending of the Form T1B.

Evidence of the Parties:

The claimant gave evidence of the nature of her work. She had been employed by the respondent company (the company) since January 2001. The work was sporadic. She was a good employee and nothing of any significance occurred until the months prior to the termination of her employment. The claimant had previously participated in the first phase of a survey being conducted by the company entitled "growing up in Ireland". After the completion of the first phase she was invited to participate in a training program in respect of the second phase. This training programme related to computers. Looking back the claimant felt that it was more of an assessment of her rather than a training program.

At the training programme she and one other participant out of the forty who participated in the programme did not receive a computer. The claimant was subsequently notified by letter dated the 23rd of July 2007 that she was not being assigned any households to survey. When the claimant enquired about this she was advised by the author of the letter of the 23rd of July 2007 that the reason was that she was not able to use a computer. The claimant was seriously aggrieved by this as she had completed a computer course and was more than competent in the use of a computer. Shortly after the 23rd of July she spoke with one of her superiors and she continued to carry out work on behalf of the company until April 2008. By letter of the 12th of March 2008 followed up by a further letter of the 29th of March 2008 the claimant was invited to contact the respondent company to be considered for further work in the third phase of the Growing up in Ireland survey. At the time the claimant considered applying but decided against it as she felt that she had been bullied off phase two of the project.

In or about May 2008 the claimant sought to be made redundant. The company acceded to the claimant's request to be made redundant and in due course the appropriate RP50 was completed and a redundancy payment made to the claimant and accepted. Initially a mistake had been made by the company regarding the fact of whether or not the claimant was an employee of the company. The company accepted in the course of the hearing that there was no issue being made about the claimant being an employee.

The respondent's representative cross-examined the claimant regarding the nature of her work and it being sporadic. It was accepted that it was not full-time and that there were periods where she was not engaged by the company. Her work was that of a field interviewer, which involved face to face contact with the subjects of the survey and also telephone contact. There was no performance issue regarding her employment with the company.

The respondent's representative opened the letter of the 16th of May 2007 to the claimant, which was sent to her to invite her to participate in the second phase of the Growing up in Ireland survey. Whilst the claimant could not recall receiving this specific letter she accepted that she must have received it as the form attached to it had been completed by her and returned to the company.

The respondent's representative brought to the Tribunal's attention and to the claimant the line within the letter, dated the 16th of May 2007, "please note that putting your name forward for training or indeed attending the training course does not confer any right to have work allocated to you". The claimant in reply advised that once a person attended a course they were always given the work. The respondent's representative pointed out that this was the first time that the company had carried out a project on a phased basis. The claimant was unaware of this fact.

The respondent's representative put to the claimant that there had been no disciplinary proceedings

ever commenced against her and that she was not notified that she was not getting any other work from the company. The claimant confirmed this and confirmed that, while she did not get to be included in the second phase, she did get other work up until April 2008 with the company. It was put to the claimant that she was not dismissed as she was continuing to work on behalf of the company. The claimant felt from her discussions with members of the company that they felt she could do any work once it only involved a pen and paper.

When the respondent's representative enquired as to whether or not she complained to anyone about how she was being treated she advised that she did not. She presumed that she was not wanted. She confirmed that she requested to be made redundant and she signed and returned the RP50 to her employer.

The respondent's representative called the Human Resources Manager. The Human Resources Manager was uncontroversial and confirmed having attended to the request for and completion of the RP50.

Determination:

The Tribunal, having considered all the facts is of the view that the claimant requested to be made redundant and the respondent company acceded to that request. No case has been made by the claimant that the selection for redundancy was improper and in the circumstances the finding of the Tribunal is that the claimant was not unfairly dismissed by the respondent company.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)