

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD892/2010

against
EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Taaffe
Members: Mr. N. Ormond
 Mr. F. Barry

heard this claim at Dublin on 29th July 2011 and 10th February 2012

Representation:

Claimant: The claimant in person

Respondent: Ms. Kerry Molyneaux, IR/HR Executive,
 IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

Respondent's case

The respondent first employed the claimant on 23rd August 2005 on a full time basis in the City West Office. At that time there were two staff members, including the claimant, doing similar type work. However when the other staff member left in October 2006 the claimant took over that person's duties while still carrying out some of her own existing duties. Some of her existing role was given over to another person in the City centre office. The claimant was given a pay rise in conjunction with this reorganisation.

The claimant went on Maternity leave in June 2007 and returned to work 8 months later. On her return to work the claimant requested that she be allowed to work a 3 day week and the respondent agreed to this. In order to facilitate this some of the claimant's colleagues took on parts of her work and a director of the respondent also helped out. However this became increasingly difficult and by January 2010 the respondent decided that this part-time working arrangement was no longer tenable and that a full-time person was required for the claimant's position. The respondent duly offered the claimant a return to full time employment but she declined this offer and the Respondent therefore made the claimant redundant on 10th March 2010. The vacant position was then filled by recruiting a full time employee.

Claimant's case

The claimant agreed that the sequence of events was as per the respondent's outline above. However, the claimant's case was that she had been told by the respondent that another employee would be taken on to cover the two days she was not working when she returned from maternity leave. This never happened and the claimant contested that had this been done there would have been no need to let her go and take on a full-time employee instead. The claimant was unable to return to full-time work due to personal circumstances and the respondent had agreed to facilitate a 3 day working week for her.

The claimant stated that there was no consultation in relation to her being made redundant and that she was not informed of any right to appeal the decision to make her redundant.

Determination

The tribunal carefully considered the evidence adduced at the hearing. It is agreed by the parties (a) that the claimant's position was terminated at a meeting in January 2010 and (b) that the claimant's position was filled, following an advertisement process, by a full-time employee.

The Tribunal is satisfied that a genuine redundancy arose in respect of the claimant's position. It is found and determined that the respondent's decision to terminate the claimant's employment was taken without any consultation with her. Additionally the claimant was not informed by the respondent of her right to appeal the decision and was furthermore not provided with an appropriately independent forum through which she could process such an appeal.

The Tribunal therefore determines that the redundancy process engaged in by the respondent was flawed and that the presence of the procedural defects, referred to in the behaviour of the respondent, was both unfair and unreasonable to the claimant. Section 6(3) of the Unfair Dismissals Act, 1977 as amended by section 5 of the 1993 Act states that "in determining if a dismissal is an unfair dismissal regard may be had, if the Rights Commissioner, the Tribunal or the circuit court, as the case may be, considers it appropriate to do so, to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal".

The Tribunal therefore finds that the redundancy of the claimant by the respondent was an unfair dismissal within the meaning of the Unfair Dismissals Acts, 1977 to 2007 and awards her €6,000.00 in compensation. This award is over and above any amount already paid to the claimant in respect of a redundancy lump sum.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____ (CHAIRMAN)