

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE *-claimant*

CASE NO.  
UD473/2011  
RP649/2011

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: Mr R. Maguire B.L.

Members: Mr J. Horan  
Mr P. Trehy

heard this claim at Dublin on 27th August and 28<sup>th</sup> November 2012

#### **Representation:**

Claimant :

Respondent:

#### Background:

The respondent is a construction development company. The claimant disputed the selection of her position for redundancy.

#### Respondent's Case:

The Managing Director (herein after referred to as MD) gave evidence to the Tribunal that as a result of the economic downturn in 2007, matters became progressively worse for the company.

The company had three sites in 2007 and most of the units on those sites were sold. Those houses that did not sell became residential lettings managed by the company.

A number of redundancies were implemented in July 2007 and as a result there was an extensive amount of payroll work and accompanying paperwork, which the claimant executed. Following from this set of redundancies the company hoped to progress the company and 27 staff were retained in the hope of this. However, a further two staff members were made redundant between 2008 and 2009.

During 2009, the company's loan was bought by NAMA and the company subsequently

submitted a business plan to NAMA in June 2010.

Subsequently, the company had to implement further redundancies. The claimant's position was one of those selected for redundancy and she was informed of this at a meeting with MD in October 2010. On the 15<sup>th</sup> October 2010 MD informed the claimant and a further seven employees that their positions were redundant. His brother informed a further four employees that their positions were redundant on that date. Fourteen members of staff were retained by the company, twelve in the office and two on site. The twelve in the office handled the company's investment properties. The staff retained by the company suffered a pay cut of between 40 and 50% effective from 15<sup>th</sup> October 2010.

The claimant worked 23 hours per week. When he met with the claimant on 15<sup>th</sup> October 2010, MD explained to her that unfortunately her position was redundant and that any remaining payroll duties would be absorbed into the roles of the remaining staff. It was intended that the Financial Controller or the Head of Finance or two other employees would take on these duties. The claimant was paid twice the statutory redundancy sum due to her and MD stated that the full amount was paid from personal savings. A letter dated 1<sup>st</sup> November 2010 confirmed the redundancy to the claimant.

MD stated that the claimant's role was primarily payroll duties. Following the claimant's redundancy the Financial Controller performed this work, as by then, there were only 14 employees. Employee G carried out work associated with the residential lettings and the remaining staff members were given additional tasks or duties. The Financial Controller subsequently departed the employment of the company and Employee T then carried out the payroll duties. The payroll duties have since been outsourced.

During cross-examination it was put to MD that the claimant also managed the accounts for residential lettings for some 700 properties as part of her role. MD stated that he only had dealings with the claimant in relation to payroll and that in any event the company does not own 700 properties. He accepted that there may have been work carried out on some residential accounts but that work was divided between all of the employees and was not just carried out by the claimant. He reiterated that the claimant's primary role was payroll and the level of work had decreased significantly with a reduction in staff from 70 to just 15. It was a valid selection process, as the company no longer required a payroll administrator.

It was put to MD that he had asked the claimant to attend a meeting in August 2010 in relation to her working hours and pay. MD did recall speaking to the claimant about the number of hours spent in the office as the claimant worked mostly from home.

It was put to MD that at the meeting in August 2010 he spoke to the claimant about a three day week in Dublin. MD stated that it would be more efficient for the company if the claimant worked three days in the office. He stated that the company needed people, "on the ground."

MD outlined that Employee C started to carry out work on the residential lettings side of the business after another employee departed the company in August 2010. It was put to MD that therefore Employee C was carrying out work that was part of the claimant's role but MD refuted this stating that Employee C handled different aspects of the residential lettings than the claimant. Employee C's duties pertained to maintenance calls, management fees, fees to agents, rental income and deposits and was a full-time employee.

It was put to MD that the Financial Controller had circulated a memo in August 2010 which pertained to Employee C's job description and that it was a match for the claimant's role. MD did not understand this to be the case stating that the claimant carried out payroll duties which Employee C did not.

It was put to MD that the claimant was the longest serving employee and he was asked what other alternatives within the accounts department were offered to her and what comparators were used in selecting her position. MD stated that the Financial Controller was involved in the overall business and he was now tasked with carrying out payroll duties which he was able to do in one hour. MD stated that in selecting positions for redundancy he had to examine what people could maintain their current role and also carry out additional duties. Any duties which the claimant did were absorbed into the role of other employees but he reiterated that her primary duty was payroll.

Employee C gave evidence that she worked in the finance and administration section and commenced her employment in May 2003. In August 2010 this witness also took up duties in the residential letting department when another employee left. Employee C said she never did the work on residential lettings that the claimant had previously done. She also had no dealings with the payroll duties.

It was the evidence of Employee T that she was told at a meeting in October that while she was being retained she had to take a pay cut and take on and absorb more functions. This witness said that the claimant's functions were mostly with payroll and financial statements. The payroll work was outsourced in September 2011 when another employee left. She commented that the earlier witness did not have a professional qualification and worked on residential lettings up to a certain level.

#### Claimant's Case:

The claimant described her occupation as an accountant technician with this construction development business which she effectively joined as an employee 1995. While she never formally had a title with the respondent the claimant told the Tribunal that ninety-five percent of her work there was operating residential lettings and the remainder was on payroll work. Her job title on her signed RP50 form was as payroll administrator. For domestic reasons the claimant undertook two of her three working days at her residence and the other day was spent in the respondent's office some one hundred fifty kilometres away. There was no objection from the respondent to this arrangement. Apart from working for the respondent the claimant also performed certain paid administrative tasks in a private separate capacity for some of the family members of this enterprise. She was never the recipient of complaints regarding her work.

In August 2010 the claimant attended a number of meetings with the principal owner of the respondent where work arrangements and location were discussed. She was upset at the content and possible consequences of any proposed changes to her work schedule. Her situation within the company was further eroded in October 2010 when that principal owner notified her that her position was being made redundant. References were made to a memorandum issued around that time regarding the claimant's position within the respondent. While that memorandum stated inter alia that her selection for redundancy was done objectively the claimant was adamant that no selection criteria were used. She was not consulted on this development and was not offered any alternatives. In addition she told the Tribunal that

she was capable of performing the tasks now assigned to other people.

The claimant received a letter from the respondent dated 1 November 2010 formally confirming her redundancy. She did not appeal that decision.

### **Determination**

The Tribunal finds that, although the procedures utilised by the Respondent were not as good as they might have been, a redundancy situation did exist. The fact of a redundancy situation was accepted by the Claimant.

The Tribunal finds that the job of the Claimant was absorbed by two other employees who had more qualifications and who worked full-time in Dublin. The respondent company had undergone a very extensive downsizing and had just submitted its business plan to NAMA. The Tribunal accepts that the Claimant was made redundant because her role as regards payroll had diminished with the series of redundancies, and the company was going to divide her remaining tasks between other full-time employees. It was clear in the circumstances that the company was centralising a shrinking workforce. The Claimant had previously refused to work all of her three-day week in Dublin, and accepted in evidence that had she been told that she would be made redundant if she could not work in Dublin for all of her working week, she still could not have done that due to her family situation.

Section 7(2)(b) and (c) of the Redundancy Payments Act 1967 as amended applied to the situation, in that the “the requirements of that business for employees to carry out work of a particular kind in the place where [she] was so employed [had] ceased or diminished or [were] expected to cease or diminish” and the “employer [had] decided to carry on the business with fewer or no employees, whether by requiring the work for which the employee had been employed (or had been doing before [her] dismissal) to be done by other employees or otherwise.”

In the circumstances, the Tribunal finds that the Claimant was properly selected for redundancy and that the dismissal was not unfair under the Unfair Dismissals Acts, 1977 to 2007.

The appeal under the Redundancy Payments Acts, 1967 to 2007 was withdrawn during the hearing.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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