

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE – *claimant*

UD830/2011

against

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath

Members: Mr R. Prole
Mr O. Nulty

heard this claim at Drogheda on 11th December 2012, 9th May 2013 and 3rd July, 2013

Representation:

Claimant: Ms Grainne Duggan BL instructed by Ms Julie O’Neill,
of McDowell Purcell Solicitors, The Capel Building,
Mary’s Abbey, Dublin 7

Respondent: Ms Anne Byrne of IBEC, Confederation House,
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

The Tribunal has carefully considered the evidence adduced. The claimant has invoked the unfair dismissals legislation in circumstances where she was made redundant in February, 2011 and she claims that her selection was unfair and unreasonable in all the circumstances. The onus rests with the respondent to demonstrate that it has acted fairly and reasonably in all the circumstances.

The claimant joined the respondent organisation in 2004. The respondent is a charitable organisation primarily funded by the HSE and local authority grants. The claimant worked her way into a management position and her role was entitled that of Support Services Manager.

In 2009 the respondent board of management were obliged to engage an independent person to investigate a bullying and harassment complaint made against the claimant. The investigation was long and drawn out but it is common case that the claimant was exonerated of all the allegations made. In the response to the allegations the claimant had, early on, raised concerns

of her own. These were referred to in the course of the investigation but were outside the terms of reference of same.

In the aftermath of the investigation and on foot of the report prepared in consequence thereof, the respondent brought in an expert consultant (JC) to look at the internal structures and operations of the respondent outfit. The Tribunal accepts that the respondent's actions were loosely meritorious and a genuine attempt to address what had clearly been a previously negative situation which had given rise to the initial grievance aforementioned.

In tandem with the work being carried out by JC, the claimant also formally brought her own concerns to the attention of the board with a view to having same worked through and considered in July 2009.

Ultimately, and of significance in the written proceeding, JC made a particular recommendation which should have conceivably have had an effect on the claimant's position. In particular, JC looked at the claimant's management role together with two other management roles, all of which heretofore had operated independently of one another and all of whom answered directly to the board. It was JC's belief that one of these managers should become a 'lead' manager with responsibility for reporting to the board on her own behalf and on behalf of the other two managers who would become subordinate in this regard.

It was the claimant's belief and understanding that each of the three managers would be suited to take on the lead role and indeed the minutes of the board towards the end of 2010 support this belief.

In the meantime, the claimant (who had been out on maternity leave) had received some assurances regarding the concerns she had raised and although in her evidence she indicated she was not entirely satisfied with same, she made no move to appeal the findings or re-iterate her concerns in May of 2010.

The claimant returned to her position after her maternity leave in January, 2011. As it happened, at about this time the respondent was led to believe that the HSE would be implementing its third drastic cut in funding in as many years and in the consequence of this notification, the respondent board was looking to restructure to allow for an absorption of the loss of funding.

It is generally accepted that back in 2006 the respondent company had also been subjected to a funding scare which had brought about the sacrifice of 5 members of staff who had taken voluntary redundancy in response to the scarcity of funding. The claimant argues that this was a precedent which was not followed in 2011.

In fact what happened in 2011 at a meeting with AL on 9th February, 2011 the claimant was given written notification of the fact that she was being made redundant. In particular, the claimant was advised that her position of Support Services Manager and the position of Refugee Manager was being made redundant. However, the respondent was not making both managers redundant and was, in fact, selecting one manager over the other to be kept on to carry out both functions based on length of service. The manager being kept on had 4 years greater service than the claimant.

The claimant was shocked that she was being made redundant. She had believed she would

presently be given an opportunity to enhance her position to that of 'lead' manager and had no idea that she was in a role due to be made obsolete. The claimant believed that the issue of voluntary redundancy had not been given consideration and further that no objective criteria had been considered for who would be most suitable to fill the role which remained, other than last in first out, which could only ever apply where 'all things were equal'. The claimant did not accept that 'all things were equal' as she had had a grievance brought against her and had initiated a grievance herself in the course of her employment. The claimant truly believed that her history with the respondent had been taken into consideration in her selection for redundancy and was a factor in her selection.

The respondent firmly denied this allegation.

The Tribunal in considering all the facts must be sure the respondent has acted fairly and reasonably in all the circumstances and in these circumstances must be mindful of the maxim 'justice must be seen to be done'. The Tribunal accepts that the covert nature of the claimant's selection has tainted her selection. There was no logical reason for not allowing both potential candidates apply for the position and/or at the very least draw up a comprehensive matrix of requirements and qualities needed for the position. The bald reliance of last in first out was unfair where all things were not seen to be equal on their face.

The claimant succeeds in her claim under the Unfair Dismissals Acts. In awarding compensation the Tribunal is mindful of the claimant's failure to invoke all internal processes as she was required to do.

The Tribunal awards €15,000.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)