

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD969/2005

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. O’Catháin

Members: Mr. G. Phelan
Mr. T. Kennelly

heard this appeal at Dundrum on 18 September 2006
and 12th December 2006

Representation:

Appellant:

Mr. Martin Corbett, Assistant Branch Secretary,
SIPTU, Connolly Hall, Churchwell, Tipperary

Respondent:

Ms. Ger Moriarty, Local Government Management Services Board,
Cumberland House, Fenian Street, Dublin 2

The determination of the Tribunal was as follows: -

Respondent’s case:

The respondent was developed from a voluntary group of ten directors appointed by the County Enterprise Board (CEB) in 1999. The respondent was incorporated in February 2001, the directors have remained unpaid. The County Council, the CEB, Enterprise Ireland and private donors funded the respondent. Staff salaries are funded through a FAS social economy scheme. This funding is limited to €488-00 per week per employee. The respondent had six employees, five of them paid €488-00 per week and the claimant as the manager and later, from July 2002, as general manager on a salary higher than the level of funding provided through FAS. The respondent

funded the balance of the claimant's salary. At a board meeting on 26 April 2005 a serious financial situation in regard to income and expenditure was discussed. This necessitated a review of the level of expenditure. As a result of this review the secretary of the respondent wrote to the claimant on 14 May 2005 to inform him that it would be necessary to reduce his level of remuneration to that provided by FÁS, offering him the alternative position of supervisor, social economy scheme. He was asked to respond to this proposal by 24 May 2005. The claimant replied on 23 May 2005 that he was seeking advice in the matter. In response the respondent wrote to the claimant on 27 May 2005 seeking a response by 2 June 2005, the date of the next board meeting. The claimant responded on 2 June 2005 saying that he found the respondent's proposals unreasonable and a breach of his contract. A meeting to discuss the terms of the claimant's contract of employment was held on 24 June at which the claimant was again offered the position as supervisor. At this meeting the claimant's representative stated that the position of supervisor was unacceptable to the claimant. This meeting later broke up when the claimant and his representative left after taking offence at remarks from one of the board members during the meeting. The board of the respondent then took the decision that they had no option but to declare the position of the claimant redundant. A letter of termination was sent to the claimant on 29 June 2005. Attempts were made to arrange further meetings but these attempts were unsuccessful. The functions of the claimant were taken on by three of the directors following the termination of the claimant's employment. The claimant's position was that he was prepared to negotiate a reduction in his salary. Notice of termination form RP50 was served on the claimant on 7 July 2005 with a proposed termination date of 22 July 2005. The claimant has not collected the monies had prepared for him to fulfil the claimant's statutory entitlements under the Redundancy Payments Acts, 1967 to 2003 and the Minimum Notice and Terms of Employment Acts, 1967 to 2003.

The Tribunal heard evidence from a witness who acted as the financial advisor / accountant and auditor for the Respondent since March 2003. He compiled annual forecasts and projections, annual audits, and cash-flow budgets. He explained that they had a board meeting in April 2005. He had prepared financial statements and projections from April to December 2005. The situation of the company was critical regarding the ability of the company to continue as a going concern. The problems arose because of the failure to raise funds. Some of the ways they raised money were a race night and a golf classic. In 2004 there was no income from these sources and at that point they had losses of €140,000.00. In the first quarter of 2005 there were further losses. In February 2005 the bank wrote to the Claimant, as he was company manager about their overdraft. The company had an overdraft facility of €25,000, and the company exceeded that by €10,000.00. The bank began to dishonour cheques.

The witness explained to the Tribunal the discussions he had with the bank and the financial situation. He told the Tribunal that the Claimant knew of the financial situation as he had discussed the situation with him.

The company was also significantly reliant on grant aid from FÁS. FÁS allocated the company funding for three years. FÁS wrote to the company to inform the company that they were not extending funding. The Claimant was aware and concerned about the financial position of the company.

The witness explained the payroll: the directors were not paid; only the manager, the Claimant and the FÁS employees were paid. The FÁS employees were paid by FÁS funding. The claimant was the only person drawing a direct payment from the company. The company could not afford to support the cost of the Claimant if it was to go forward. The board of directors now take on the

and duties that the Claimant had. The additional cash that they save pays the arrears that accumulated. The company is still highly dependant on FÁS and now also Pobail.

In cross-examination the witness explained that the Claimant was paid €24,000.00 and this increased to €35,000.00 so as to be comparable to the public servants rate. The witness agreed that the Claimant did everything in his power to raise funds. He discussed the budgeting with the Claimant, particularly the tenancy rates/rents.

Claimant's case:

The Tribunal heard evidence from the Claimant. He commenced employment with the respondent in 2001 and had a written contract at all times. He was initially employed to develop the project, to source a site and to source funds. He was successful and had a good relationship with the board. He applied for promotion as general manager and was successful.

The Claimant told the Tribunal that when that bank began to correspond with him (regarding debts) the board had an emergency meeting. This “put in place a train of events” how he was removed as general manager, “it was an easy way out for the board”. He felt that the board dismissed him because they were inactive in their own responsibilities regarding fundraising.

At one time he had wrote to the board to say that the terms and conditions in his contract were not subject to negotiation and their position was that they were. The only cost saving measure that was taken was that of his salary. There were lots of other options to save money and he discussed these with the chairman. He negotiated with the creditors and also obtained funding from a benefactor and this was presented to the board.

He himself raised €9000.00 by organising a race night. None of the directors raised “a penny” on that event. There was a “huge apathy”. He felt that the directors were running the company to the ground because of their “apathy to their commitments”.

He was never told that there was a difficulty with his position and that they would not be able to retain his position. The board did nothing to reduce the deficit of monies other than to terminate his employment. The proposal that the board put to him appeared to be an ultimatum. At a meeting with the board he felt insulted and left the meeting as one of the members told him that he was the only person being paid for attending. He had thought that the meeting was to negotiate and he was not given the opportunity to put forward alternatives. He did not accept his redundancy he felt that he was “ousted” from his employment and proper procedures were not followed. There was still a position for a manager as the funding was there. He would have considered the managerial position (funded by FAS by circa €24,000.00) and he “would have negotiated it.

In cross-examination it was put to the Claimant that he left the meeting with the board. The Claimant replied, “yes after being insulted”. It was put to him that it would have been important to stay and insist on his future being discussed. He explained that, “it descended into farce”.

Determination:

The Tribunal determine that the Claimant was not unfairly dismissed. The Claimant's position was made redundant. Consequently the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)