

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employer

CASE NO.
UD908/2006, MN462/2007

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 to 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr J. Walsh
Mr O. Nulty

heard this claim at Monaghan on 20th June 2007

Representation:

Claimant : Malone & Potter, Solicitors, 7 Cope Street, Dublin 2

Respondent : Mr. Vincent Turley, Human Resource Services, 1 Black Lane, Latlurcan, Monaghan

The determination of the Tribunal was as follows:

Respondent's Case

The roof production manager in the area where the claimant worked outlined his involvement in this case. The witness who described the claimant as a good worker had a number of informal meetings with him about his status and future with the company. Those meetings commenced in the middle of 2005 when the witness learned that the client was setting up his own business. That business was directly related to the respondent's activities as the claimant was planning to establish a roofing enterprise. The claimant was most hesitant to discuss that business. However he did not deny his involvement and added that he had no immediate intention to leave the respondent. The claimant assured the witness that in the event of his departure that he would give the company plenty of notice.

The managing director contacted the operations' director over reports that the claimant was setting up a rival business to the respondent. In investigating those reports the operations' director asked the roof production manager to talk to the claimant about those reports. It was the witness's opinion that the claimant would leave the respondent if those reports were correct. The production manager told the witness that the claimant was unwilling to discuss the topic. The witness together with the operations' manager and the claimant met on 16 January 2006 in relation to this ongoing issue. The

claimant was informed that his proposed enterprise placed him in a conflict of interest position as regards his status with the respondent. The company also expressed concern that the claimant had access to confidential company and customer information. That access compromised the welfare of the respondent.

According to the witness the conflict of interest arose because the claimant intended to produce roof trusses that were in direct competition with the respondent. The operations' director insisted that there was no difference between roof trusses for timber and block built houses. A large investment was needed to manufacture such trusses and such a task was not a part-time operation. The claimant had already secured equipment and property to establish such an operation. By the summer of 2006 the claimant's business was advertising in the local media. Both during that meeting on 16 January and subsequent to it the claimant maintained a silence on his emerging business and accordingly did not engage in any discussions with the respondent in relation to it.

Another meeting took place on 18 July 2006 to address this situation. In addition to the witness the respondent was also represented by its operations' manager and a human resource manager and a representative accompanied the claimant. The intention of that meeting was to present the facts of the claimant's situation to him. It was also hoped that an exit plan for the claimant's departure from the respondent could be agreed. Three options were presented to the claimant who in turn commented that he had no intention of leaving the company. The claimant also stated that it was none of the respondent's business what he was doing with his own enterprise. Again he did not deny his involvement in his own roofing business. He was asked to reflect on his position within the respondent.

The respondent formally terminated the claimant's employment by letter dated 19 July 2006. The company had lost confidence in the claimant as an employee and felt there was no other option but to dismiss him.

In cross-examination the witness justified the claimant's dismissal on the grounds of gross misconduct. The claimant was given the opportunity to address the situation and the witness could not understand why the claimant did not do that. The operations' director felt that the respondent was probably too generous, tolerant, and patient towards the claimant during this process. The claimant's business was a threat to the company as both enterprises were in the same business. In accepting that the respondent was mainly involved in the manufacture of timber frame kits the witness said that the company also produced roof trusses for conventional houses.

The witness agreed that the claimant was an excellent employee but as team leader he had access to important information on customers. He denied that any other issues apart from the claimant's involvement in his own business had any influence in the decision to dismiss the claimant. The claimant asked the human resource section to point out to the claimant that he could appeal the decision to dismiss him. The witness understood that the respondent acted properly and according to its procedures.

Claimant's Case

The claimant commenced employment with the respondent in 1995 as an apprentice carpenter/joiner. When his employment ended in July 2006 he was a team leader with several staff and was also responsible for first-aid. In 2005 he started to set up his own business for the manufacture of roof trusses for block built houses. Those trusses were different from those manufactured for timber built homes. Besides the respondent produced "next to nothing" of roof trusses for block built

houses. The claimant said that there was not a conflict of interest between his business and that of the respondent's. His objective in setting up his business was to earn more money for personal and domestic reasons.

The witness confirmed he told the respondent in January 2006 he would give them plenty of notice when leaving their employment. He was not told that there was a conflict of interest between what he was doing and his position within the respondent. The claimant felt that his enterprise was his own business and did not refuse to tell the respondent about it. He subsequently "kept his head down" as he continued working away. Nothing formally happened regarding that issue until July 2006 when he was invited to attend a further meeting concerning that topic. That meeting "came out of the blue" and he again told the respondent about his business. The operations' director suggested that the respondent could give his business some work under certain circumstances. The claimant did not see any point in choosing any of the options presented to him at that meeting. Even though he was not told of the nature of that meeting in advance the claimant knew what it was about. He said he was not offered a chance to appeal the decision to dismiss him.

Determination

The claimant consistently refused to give an explanation to the respondent on the nature and substance of his emerging roof trusses business. The respondent was understandably concerned at the possible impact such an enterprise would have on its own operations. That concern was increased due to the claimant's position within the company and his access to certain sensitive and confidential information. A more open approach and attitude was needed from the claimant when addressing the respondent's concerns. There was a possible conflict of interest between the work undertaken by the respondent and the enterprise established by the claimant. Due to the claimant's lack of openness and engagement on this topic the company could not be expected to retain the claimant as an employee. The claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 is allowed and the Tribunal awards the appellant €2520.00, being six weeks' pay, under those Acts. While the respondent had justification for their decision to dismiss the claimant his actions and behaviour did not fully amount to misconduct within the meaning of the Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

