

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**

Employee

**Against**

Employer

**under**

CASE NO.

UD83/2007

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B.L.

Members: Mr F. Cunneen  
Ms. E. Brezina

heard this claim at Dublin on 7th June 2007 and 24th October 2007.

**Representation:**

Claimant: Mr. David McCarroll, O'Mara Geraghty McCourt, Solicitors,  
51 Northumberland Road, Dublin 4

Respondent: Ms Angela Grimshaw, Peninsula Business Services Limited, Riverside, New Bailey  
Street, Manchester, M3 5PB, United Kingdom.

The determination of the Tribunal was as follows:-

**Respondent's Case:**

The Chairman of the respondent company gave evidence. A new Board was elected on 19 June 2006. After the new Board met he wrote to the claimant on 12 July 2006 requesting a report on the company including the financial figures for the half year. When the report was received it was realised that there would be a loss in 2006. The Board had a number of meetings, and agreed to set up a business analysis group to improve trading. At that time the claimant was not aware of this group.

Staff working in the catering area included a full time chef, part time chef, full time bar and catering manager, restaurant manager, assistant restaurant manager and six/seven part time staff. Opening hours varied. The Board felt that staffing levels were excessive. The decision was made to issue redundancy notices to the catering staff but after consultation it was felt that some staff could remain on a re-structured basis. The Bank communicated with the Club about the company's

borrowings.

The Club had to produce a five-year plan for the Bank. At that time, a decision was made that the claimant would remain. The remedy was that the members of the Board could take on extra duties, two members could take over the food and beverage, two members could be responsible for the course and the Chairman and another the administration and financial side.

On 3 November 2006 the Chairman spoke to the claimant and told him that his role would be made redundant and that he would be paid his full entitlements. The Chairman offered him an alternative job as golf pro, but the claimant said he wasn't interested. He gave the claimant two weeks notice and told him that he was not required to work this and paid him three months notice in lieu. The claimant was given a right of appeal, but didn't appeal the decision. His contract ended 3 November 2006.

In cross-examination, the Chairman said the claimant reported to him, and he in turn reported to the board. He said his relationship with the claimant was business-like and he knew him. The production of accounts was the claimant's responsibility.

The Board set a number of tasks for the claimant to improve the workings of the Club, which were communicated to him by e-mail. There was also some dissatisfaction with their part-time accountant and the Board asked the claimant to meet with an experienced accountant. He agreed this accountant was a work acquaintance of his.

He did not recall a meeting between himself, another person and the claimant at the end of October or of a subsequent meeting in which the claimant said he would put 20% of his wages into the kitty.

When reports were compiled by the claimant for the Board it was felt there were some discrepancies. The ongoing financial situation was deteriorating and the board had to take drastic steps and the board members took on the General Manager's duties. Discussions were held at board level and in order to make the club viable they could not afford to pay the claimant's salary. The claimant had been re-assured in September and October 2006 that he was not being made redundant. Subsequently, the Board made the decision to make the claimant redundant on 2<sup>nd</sup> November 2006.

The Chairman agreed that the claimant was given notice on 3 November 2006 and that he was being made redundant. An RP50 was handed to him.

A member of the Board gave evidence. He was nominated to the Board at the AGM on 19<sup>th</sup> June 2006. The realisation at that meeting was that there might be a deficit of income over expenditure. The budgeted membership for 2006 was for 500 members approximately but the actual figure was 436. The forecast was grim and there was no prospective membership for the remainder of 2006. The annual subscription was €2400.00, a development levy of €650 was introduced and also a bar pre-payment levy. The General Manager and Part-Time Accountant prepared the management accounts.

It became apparent that the projected income for 2006 was unlikely to materialise and that the Club's costs were unsustainable. The Food and Beverage area income was running behind budget and it was decided to put the staff in that area on protective notice.

As the Club moved to the latter half of 2006 it was under pressure from the Bank, and had outstanding creditor liabilities and was under pressure making payments to them and to keep the Club operating it was decided to make the General Manager redundant. Moving towards 2007 the Club was looking for loans from members to satisfy the Bank debt.

Under cross-examination it was the member's recollection that the decision was made on 2<sup>nd</sup> November 2006 to make the General Manager redundant. Subsequently, certain tasks previously carried out by the General Manager were given to the part-time Accountant. The Board was not willing to accept the General Manager's 20% cut in his salary to alleviate the Club's financial situation. He did not agree that the Part-Time Accountant replaced the General Manager. Since the claimant was made redundant each area within the Club was reporting to a Board member.

### **Claimant's case:**

The claimant initially worked in the pro shop and on 3 April 2004 was offered the job of General Manager. He had overall responsibility for running the facilities of the golf club, creating procedures and was responsible for sales and marketing. His role included creating membership for the Club.

The claimant had a distrust of the new Board which was appointed on 19<sup>th</sup> June 2006. Two members told him that he was going to be removed from the Club. In September 2006 he was assured his job was not in jeopardy. In a conversation he had with both a Director and Secretary of the Club in October 2006 his position was not raised as a possible cutback within the Club. Subsequently, in another conversation with the Chairman in October 2006, the Chairman said his position was not in question.

The claimant established loss for the Tribunal.

Under cross-examination the claimant said that at no time during his employment in the Club was his performance questioned. Because of the financial situation within the Club and having spoken to two members of the Club he was aware there was an agenda to remove him. He received his redundancy payment but it was taxed and he found it quite unacceptable.

He had a meeting with the Chairman and a Director and he was told that the Club wanted to have cutbacks within the Food and Beverage area. The claimant offered to have his salary reduced by 20% but that was not accepted.

On 3 November 2006 he met the Chairman who indicated that the Club had no option but to make him redundant. He was given two weeks notice, outstanding holiday pay and paid to the end of his contract and told he could leave immediately. The Chairman said the Club was looking to franchise the golf pro and that the claimant could tender. The claimant declined the offer, as he did not see it as a job offer. He left thirty-five minutes later.

The Manager of Food and Beverage gave evidence. When the claimant's employment was terminated he reported to the accountant. He lodged monies for the pro shop and fees to the Bank on the accountant's instructions. He believed the accountant replaced the General Manager. He said that the accountant worked several days a week

A previous member of the Club gave evidence. The previous General Manager looked after banking and the Club needed to appoint a General Manager who would have wider responsibilities including the day-to-day running of the Club. The Club wanted a General Manager as a key point of contact. The Board provided strategy and directions and the General Manager inter-acted.

**Determination:**

The Tribunal having carefully considered the evidence find that the procedure for dismissing the claimant was unfair. The fact that the claimant had been assured that his job was safe on three occasions contributed in no small way to this finding. There is no doubt that a redundancy situation existed in the company but the claimant should have at all times been informed that his job was in jeopardy. The Tribunal note also that the claimant made representation to the Board in relation to reducing overheads which included a cut in his own salary and which the Board failed to explore with him.

In the circumstances, the Tribunal finds that the claimant was unfairly dismissed and awards him the sum of €10,000.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

