EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF: CASE NO.
Employee UD1384/2005

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Ms. M. Sweeney
Ms. H. Kelleher

heard this claim at Cork on 19th February 2007 and 18th September 2007

Representation:

Claimant : Ms Elizabeth O'Connell B.L. instructed by Ms Martha Carter, O'Leary Carter & Co, Solicitors, Strand Street, Kanturk, Co Cork

Respondent : Ms. Gillian Ahern, Ronan Daly Jermyn, Solicitors, 12 South Mall, Cork

The determination of the Tribunal was as follows:

Respondent's Case

The respondent operates and maintains a park of approximately five hundred acres. In 1995 the park was opened to the public. At that time it was envisaged that it would attract up to fifty thousand visitors a year. Even though the respondent relied on another entity for financial support it still needed to be commercially viable. However by early 2005 the maximum yearly number of visitors calling at the park was twelve thousand. In January of that year the respondent's owner appointed a family friend and businessman as a consultant to oversee a restructuring of the company.

That consultant began his evidence by stating that a financial crisis was fast approaching for the respondent. Cost cutting was needed. The biggest overhead was salaries. The park opened to the public from St Patrick's Day to 31 October every year and employed several fulltime staff. At a meeting with the owner on 17 February 2005 it was decided that staff levels had to be reduced by up to four employees and that their jobs could be contracted out. The witness was also to carry out an exercise to determine the role and functions of the current staff. Staff were asked to provide him with their job descriptions and the witness was to report to the owner. The aim of that exercise was to estimate the value of the contribution made by those workers. The witness emphasised that the owner whom he described as the boss made the decisions.

The witness said that grass cutting was the claimant's primary role in the park. That task could be contracted out. At a further meeting attended by the owner and the witness it was decided that the claimant's position among others could be made redundant. The respondent was not in a position to offer him an alternative permanent post. The witness first discussed a redundancy situation with the claimant on 2 June 2005 and gave him a letter on that subject on the 7 June 2005.

References were made to the introduction of a clock-in system for staff. That system commenced in early 2005 and apart from the claimant, staff accepted and used that facility. Due to its age the clock did not always perform properly and at times appeared to skip a day. The witness however was adamant that the claimant was dismissed on the grounds of redundancy and added that a redundancy amount was still available to him.

The issue of clocking-in was again raised in cross-examination. The witness said that the claimant co-operated with that system from February 2005 onwards. However due to some technical difficulties with that system the claimant was not clocked in as working on 27 May 2005. The witness recorded in his diary that the claimant took leave for that day. That issue was discussed between the two men on 2 June 2005. The claimant wrote and signed a statement about the clock-in system and his work on 27 May. According to the witness that document was signed prior to him informing the claimant about his redundancy. The consultant was certain he told the claimant on 2 June 2005 that he was facing redundancy. The witness said that if this is recorded in his diary that it was said as stated. However without his diary he could not be definitive about that. The main reason for that meeting on 2 June was to inform the claimant that his position was subject to redundancy.

On 7 June 2005 the witness again met the claimant and handed him a letter dated 1 June formally notifying him of his redundancy. The witness accepted he did not give that letter to the claimant when they met on 2 June and was unable to give reasons for that inaction. The consultant acknowledged receiving a letter from the claimant on 7 June. Redundancy was not mentioned in that letter which was written subsequent to their meeting on 2 June and furnished to the witness prior to the issue of the redundancy letter.

In denying he was brought into the respondent as a "trouble-shooter" the witness stated he "was next in line to the boss". While he had no formal qualifications in management he was experienced in that role. He regarded himself as a consultant with an undefined role within the respondent. He did not accept that the claimant's role was that of a ground manager. Judged on the claimant's own job description he was satisfied that the claimant was under a false impression as to his role. The witness however did not always know what the claimant was doing as an employee with the respondent. He told the tribunal that he never saw a document or contract outlining the claimant's role and functions. The witness interviewed every employee to ascertain his or her role with the respondent. It was the consultant's impression that the claimant regarded the consultant as a threat to his job. There would be noticeable savings from implementing the redundancy. The claimant rejected both a redundancy offer and an invitation to apply for a contractual position with the respondent.

The auditor of the respondent company accounts gave evidence. He told the Tribunal that the respondent company had been accruing losses over a three-year period and these had been absorbed by the parent company. He was not involved in the decision to effect redundancies at the company. Under cross-examination, the auditor showed the Tribunal the savings made by the company by contracting out the duties of the claimant.

The internal accountant of the respondent company gave evidence. He told the Tribunal that the number of full-time employees had been reduced from thirty-six in 2003 to five in 2006. The

number of part-time employees had been reduced from eighteen in 2004 to twelve in 2006. In 2007, there were four full-time employees and one on a part-time rolling contract. All retained employees had shorter service than the claimant.

Claimant's Case:

The claimant gave evidence. He had originally qualified as an electrical engineer. He returned to Ireland and commenced employment with the respondent in December 1995. There was a horticulturist employed at the time and the claimant carried out his instructions for planting and maintenance. He had responsibility for three employees and would maintain all shrubs and trees throughout the park. The park is situated on reclaimed peat bog on a mountainside and the claimant was responsible for maintaining the roads when they had eroded.

The respondent employed a consultant *and* became distant from the claimant. The consultant asked the claimant to outline his duties, which he opened to the Tribunal. The consultant introduced a clocking system for all employees. The claimant objected to this because it was not appropriate to the operation of the park. Employees could be at any part of the park and would have to return to the clock before departure. The claimant saw this as being impractical. The consultant told him it was installed for insurance purposes. The claimant felt that he had been left to work without it for ten years and that it was unnecessary at this stage. He was told to start using it and if he could not do his work within thirty-nine hours, someone else could be allocated to those duties. The claimant said that during silage season, he could work twenty-four hour days depending on the workload and his hours could not be curtailed. He was concerned at the introduction of the clock system. He had given one hundred per cent to the job and felt cheated at this turn of events. The claimant received a letter from the respondent instructing him to use the clocking system and he began using it.

On the 30 May 2005, he was requested to attend the office and was accused of tampering with the clock. He was outraged at this accusation as the clock was located in an isolated area and was open to abuse. He had no confidence that the clock was in full working order in the first place. The claimant was the only one challenged on this issue. The consultant wrote out a statement and asked the claimant to sign it. The claimant refused. He denied tampering with the clock or having knowledge that the clock had been tampered with. He was told he was dismissed and after requesting it in writing directly from the respondent, he left the office. He continued working.

The claimant received a letter by hand from the consultant on the 7 June 2005 (dated 1 June) stating that he would be made redundant effective from 7 June 2005. The claimant had written to the consultant on the 2 June 2005 requesting clarification of the allegations against him. He received a reply directly from the respondent on the 30th June enclosing an application form for redundancy. The claimant denied that a discussion regarding redundancy had occurred at the meeting on the 30 May 2005. He did not have a meeting with the consultant on the 2 June 2005. He had never received a contract of employment outlining his duties at the park. The claimant was concerned that the consultant was pushing an alternative agenda. He felt his integrity was undermined as a result of the accusations. The consultant had told him on a number of occasions that his position was secure. The claimant hoped to meet with the respondent to discuss the matter but when the claimant saw him, *the respondent* walked away without speaking to him.

The consultant said that it was uneconomical to retain a fulltime employee for "grass-cutting". The decision had been made to contract out the position. The claimant would have the opportunity to tender for the contract and he would see the advertisement in the newspapers. This discussion occurred on the lawn on the 7 June 2005. The claimant estimated that grass cutting formed thirty per cent of his overall duties. When he attempted to outline this to the consultant,

he refused to discuss the matter. The claimant attempted to telephone *the respondent* at home and *the respondent* refused to take his call. The claimant established loss for the Tribunal.

Under cross-examination, the claimant said that he knew that the respondent was not interested in making a profit and was happy to break even. He felt he had been dismissed for a difference of opinion on a clocking system after ten loyal years of service. His pay was never enhanced or reduced based on the clocking information. He felt that he had no opportunity for recourse to the company when the decision had been made and he was not the most junior of employees at that time.

The Education Officer at the park gave evidence. He told the Tribunal that he had worked at the park from 1996 to 2005. He was made redundant in September 2005. His role was defined at the park and he said that the clock system had become a difficulty for all employees when it was introduced. Most employees were filling out timesheets at that time. He felt the clock system was brought in to target certain people. The claimant did a lot more than grass cutting at the park. It was not unusual for all employees to take on a wide variety of roles as and when they were needed. Under cross-examination, the witness accepted that over time, the number of fulltime staff at the park had been reduced.

Determination:

Following careful consideration of the evidence and the submissions made in this matter the Tribunal find that there was a total conflict of evidence as to whether or not there was a meeting on the 2nd June 2005 between the claimant and the consultant to discuss redundancy and accordingly is unable to reach a determination on this fact. There was, however, sufficient evidence adduced by the Respondent establishing the financial need to reduce staff numbers at the Respondent company, and, accordingly, to establish that a redundancy situation did exist.

Whilst the Tribunal considers that the manner of communication to a loyal, long-serving employee and his treatment in the matter was seriously deficient, the Tribunal is, however, satisfied that the claimant was not unfairly selected for redundancy, therefore, the claim under the Unfair Dismissals Acts, 1977 to 2003 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)