

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO
UD908/2007

MN714/2007

Against

2 Employers

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L

Members: Mr P. Pierce
Ms. K. Warnock

heard this claim at Navan on 15th April 2008

Representation:

Claimant(s) : Ms. Ailionora McMahon instructed by Mr. Murrough E McMahon,
Regan McEntee & Partners, Solicitors, High Street, Trim, Co Meath

Respondent(s) Mr. Brendan Steen, Steen O'Reilly & Co., Solicitors, 31/34
Trimgate Street, Navan, Co Meath

The determination of the Tribunal was as follows:-

Respondent's Case:

The first witness for the respondent gave evidence that he became Managing Director of the XXXX shortly after May 2007. XXXX was part of a hotel group and on taking up his new position he made an initial assessment of each hotel within the group. He carried out an assessment of the management structure in the hotel and set about restructuring the business to enable the General Manager to spend more time growing the sales of the business.

He concluded that the appointment of Duty Managers moving throughout the hotel capable of multi tasking was the way forward. These should be capable of managing unusual situations and would support the General Manager. Positions within the hotel were also identified which could be eliminated or amalgamated and it was agreed between the General Manager and himself that the

position of Bar Manager would be made redundant. The reason for this decision was not primarily financially driven. The function of the Bar Manager was integrated with the duties of the new Duty Managers and this situation currently remains in place. It was also decided that where relevant, part-time employees would replace full-time employees.

Under cross examination he agreed that the only position that was made redundant was that of Bar Manager and that no approach was made by the employer to the claimant offering another position within the organisation. He felt that the claimant's skill set was not appropriate for the new structure and thought that the offer a part time bar position would not be acceptable to the claimant.

The second witness for the respondent gave evidence that he was employed as General Manager of the hotel since the last week of May 2007. He was surprised at the rigid structure that existed in the hotel and found that the structure was different to other hotels where he had worked. He came to a decision along with the Managing Director that a new structure was required and multi-skilled people capable of performing multi-tasks were required in the hotel. He agreed that the position of Bar Manager should be made redundant and thought that the claimant would not be capable of integrating into the new structure as his overall knowledge was not extensive enough.

The witness gave evidence of meeting the claimant in the hotel one day when the claimant was off duty. He did not know why the claimant was in the hotel on his day off. On that day he informed him of the restructuring process that was being undertaken and told the claimant that he was being made redundant with immediate effect. The claimant made no comment when he told him he was being made redundant. Under cross examination he agreed that no warning was given to the claimant about the fact that he was going to be made redundant and that no reference was given to the claimant. He was not aware of any acrimony that existed between the claimant and himself.

Claimant's Case:

The claimant gave evidence that he started working for the respondent November or December 2003 and worked for a total of three and a half years. He was employed as a Bar Manager and had responsibilities for staffing rosters, tills, entertainment and running the bars. On occasions he attended work on his days off and came in early to work. He also covered night porter and Duty Manager shifts.

On the 25th July 2007 he received a telephone call from the General Manager requesting a meeting. He met with the General Manager and the Financial Controller in the green room and was informed that he was being made redundant. He was not given any option to work out his notice. He was not informed as to why he was being made redundant. He was not offered any other position in the hotel and had no knowledge of any restructuring that was taking place.

Approximately three weeks later he met with the General Manager who gave him a redundancy form which he brought home with him as he needed time to study it. During this meeting he sought a reference from the General Manager but was never given one. He never received a contract of employment from his employer and was unemployed since being made redundant until the 3rd April 2008 when he secured further employment. Under cross examination he agreed that he received payment for his two weeks notice and his redundancy cheque had been returned to his former employer on the 27th September 2007.

Dissenting opinion of Mr. Pat Pierce

The writer believes that a redundancy situation did exist in this case. The Company had decided to reorganise its management structure so as to free up the General Manager by appointing a second Duty Manager, with the consequence that the Bar Manager position was not necessary. The Company decided that the Bar Manager did not have the basic skills that would enable him to train up to become a Duty Manager.

However, the Company had enjoyed the service of this manager for 3½ years, was satisfied with his work, and insists that he was let go solely because his position became surplus to requirements. Against this background, and with no prior discussion of any difficulties, and while in the hotel to help on his day off, it was extremely unfair and insensitive to bring him into the office to tell him that he was being let go immediately as redundant. He was not allowed into the hotel during his notice period, was not offered a reference to help him in finding a new job, and the possibility of working temporarily as a barman in this or one of the group hotels was not considered. There was no urgency regarding this redundancy, the first step in an extended period of reorganisation, and the Company certainly owed the employee and his new situation far more consideration and better treatment than it afforded him.

Notwithstanding the above very poor conduct by the Company, it remains that there was no subsequent appointment to the position of Bar Manager. The bar management role has simply been taken up as one of the several tasks of Duty Manager, an arrangement made possible by the appointment of a second person in that much more comprehensive role. The writer therefore believes that the Bar Manager position became redundant under the restructuring that the Company considered necessary to improve its operations, and allow the General Manager to devote time to marketing and developing the business.

Determination

The Tribunal has given careful consideration to the evidence it heard in the course of this hearing. In cases such as these, the onus is on the Respondent Employer to demonstrate that it has been objectively fair in its process of selection for redundancy. In addition the Respondent must show that the position and not the person was made redundant.

The Tribunal accepts that the Respondent was not merely motivated by financial saving when it sought to make the Applicant redundant. It accepts that there was a desire to change the apparatus for reporting and to encourage multi tasking.

However, it remains unexplained to the Tribunal why the Applicant was not considered capable of being trained up to becoming a duty manager and/or seen as a person capable of multi tasking. It was unfair of the employer not to give the Applicant an opportunity to apply for the new position being created.

The manner in which the employer sought to rid itself of this employee was not objectively fair or reasonable. The Tribunal finds that the company failed to show that a genuine redundancy situation existed herein.

Accordingly, in a majority finding with Mr. Pierce dissenting, the Tribunal awards the sum of €10,000.00 for loss of earnings and makes no award in respect of Minimum Notice which has already been paid.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

