

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD504/2007

Against:

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Hayes BL

Members: Ms J. Winters
Ms M. Mulcahy

heard this claim at Dublin on 20th September 2007 and 14th January 2008

Representation:

Claimant : Mr Richard Clinch of Seamus Maguire & Co, Solicitors, Main Street,
Blanchardstown, Dublin 15.

Respondent : Mr Loughlin Deegan, IBEC, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

Claimant's Case

The claimant gave evidence. He had been employed by Unique Security, initially as a supervisor but from 2004 he was general manager and oversaw all security work including recruitment and staffing. 125 – 140 were employed full-time.

The respondent took over the business in 2005. The claimant was involved in the takeover negotiations. He expected his role to continue and expand. He reported to the managing director at his office every Monday morning. In February 2006 the claimant and his staff moved into an office in the same building as the managing director. He had problems with the layout of the office. There was no secure access and he was in an open plan office. They were given cleaners uniforms which were not good for their professional image. The respondent acquired another security company and he was involved in integrating it with the existing business. He was working at least 100 hours per week. He did agree with the decision to make the junior operations manager

redundant, however he expected that the redundancy would happen in January 2007 and not in December 2006. He took 5 or 6 days off in 2006 in lieu of the extra time he worked.

In August 2006 there was a meeting to discuss sales targets for 2007. Growth of 25% in turnover was expected. He felt that this target was impossible. The managing director told him that the target had to be reached. To increase business a salesman who knew the security business was required. The job was advertised and interviews were arranged but no one was employed. The job was offered to an existing employee of the respondent but in the end he stayed in his original job. The claimant was still working 100 hours per week.

On 13th September 2006 there was a meeting. The managing director told the claimant that he would be reporting to the head of security, the national manager for security division. The claimant was gutted because someone else had taken over what was in effect his job. His hours of work did not decrease.

The operations manager told the claimant to 'push forward' to the new-year. He was not happy with the amount of hours that the claimant was working but did not suggest anything. They missed the target for December 2006 by a small amount. The operations manager was not satisfied. He expected the claimant to work no more than 40 hours and still achieve targets. The claimant thought this was not possible. The claimant also thought his staff would not want to work shorter hours.

The claimant was given targets again in January. He was told that head office wanted them met. The claimant felt betrayed when his job was offered to someone else. He resigned because he felt pushed. He was hospitalised with a heart attack in February 2007. He was not aware of a grievance procedure for managers. After he left the managing director asked the claimant to come to a meeting but the managing director did not turn up.

At his exit interview the claimant was asked to consider other options to resignation. He was not prepared to work reduced hours; he felt that job could not be done part-time. He also stated he was not interested in a role in training. He thought that a sabbatical would not solve his difficulties.

Respondent's Case

The national manager for security gave evidence. The claimant looked after the day-to-day operation of security. His involvement was with budgets. In August 2005, Route 101 was announced. The respondent is part of an international organisation. The organisation plans to raise turnover to 101 billion Danish Kroner worldwide. This target is to be achieved by 2013 or preferably by 2011. The budgeting process for 2007 started at around the same time but they were separate documents. The budget is the promise for the following year. The bonus is based on the budget. The claimant did not complete the budget forms. At that time the business was growing year on year. The target was reasonable.

In Dec 06 he was aware that the claimant and the staff in the field were working excessive hours. He thought that work should have been planned rather than increasing the working hours of staff. He wanted to start 07 as a clean sheet. He told the claimant to stop working crazy hours and that if extra staff could not be recruited to cut contracts.

The claimant had listed the criteria for a security sales person but it was difficult to find such a person. A budget was allocated for the job.

The national manager for security needed the claimant in the office. Site work is stressful and could lead to health problems. He had been anxious that the claimant continued working. He accepted that the claimant had health and family concerns but the claimant did not discuss the matters.

The HR manager gave evidence. She had arranged the interviews for the security sales person position but did not attend the interviews. A grievance procedure did exist. Managers are not mentioned specifically in the grievance procedure.

She attended the exit interview for the claimant and took notes.

Determination

The Claimant commenced employment with Unique Security in 1998 as an operational supervisor. He was promoted to security manager in 2003. In 2004 he became general manager. Unique Security was taken over by the Respondent in November 2005.

Initially the Claimant reported directly to DH, the Respondent's managing director. In September 2006, PG was appointed to the role of head of security and the Claimant was to report to him rather than DH. The Claimant saw this as a diminution in his role.

The Claimant told the Tribunal that he had worked in excess of 60 hours per week for Unique Security. He said that this substantially increased with the respondent and that, for a period of fifty weeks, he worked in excess of 100 hours per week. There was no evidence to support this claim. However, it was clear that the Claimant worked long and excessive hours, which on occasions exceeded 75 hours per week.

It is clear that the Respondent required more employees. Attempts were made, including a recruitment drive to Poland, to secure more employees. These were not, however, sufficiently successful before the Claimant's resignation. The Claimant did accept, however, that the Respondent had made a concerted effort to recruit additional staff.

The Claimant told the Tribunal that his division had been given an unrealistic target for 2007. This was part of an ambitious worldwide target for the Respondent's group of companies. When the 2007 budgetary process commenced in September 2006 and the Claimant was asked to submit proposed figures for his division, he failed to do so. He told the Tribunal in explanation that his strength was operational rather than financial.

At a meeting on the 11th January 2007 with PG, the Claimant was told, *inter alia*, that there had to be a drastic cut-back in the number of hours he was working. The Respondent had several concerns in this regard. Firstly, there was concern that the Claimant would become burnt-out; secondly, it was felt that it did not look good to have the manager working nights on sites; thirdly, there was concern that if the Claimant continued to take on all the work himself and failed to delegate to subordinates, that his subordinates would never learn to run the business in the Claimant's absence; fourthly, the Respondent did not wish to be admonished or punished because its employees were working excessive hours; and fifthly the Respondent wanted to ensure that it complied with the JLC.

Shortly after this meeting, on the 23rd January 2007, the Claimant submitted his resignation. He

wrote:

“It is with regret that I am informing you of my immediate resignation from my position with this company. This decision has not been taken lightly but with unrealistic company policies, recurring health problems and family difficulties that have resulted from my position with this company. In the future my position would have changed so now I feel would be a good time for this company to make this position redundant as was done with Operations Managers in December 2006.”

It is for the Tribunal to determine whether this resignation amounted to a constructive dismissal.

The Claimant explained to the Tribunal that the unrealistic company policies to which he referred in his letter of resignation were:

1. The structure for getting new business; and
2. Staffing issues.

As noted earlier, the Claimant accepted that the Respondent did its best to recruit new staff.

In order for an employee to claim that a resignation amounted to a constructive dismissal, he must show either that the terms of his employment had been fundamentally breached or his employer had acted so unreasonably that he was entitled to resign. However, in making a claim for constructive dismissal the Claimant must also show that he acted reasonably towards his employer in the manner of his resignation.

In this case the Claimant does not allege any fundamental breach of his contract of employment.

The Claimant did not, in advance of his resignation, seek to either informally or formally, discuss any grievance with his employer. The Tribunal has previously held that an employer ought to be informed of any grievance so as to have an opportunity to remedy it. Indeed, in this case, the Respondent was attempting to have the Claimant reduce his working hours and to employ extra staff.

When the Claimant submitted his resignation, he was offered an adjusted role within the company. This would have involved a training role without the pressures of his managerial role. He refused this offer. He also refused the offer of a sabbatical. Evidence was given on the Respondent's behalf that it was anxious to retain the Claimant's services because he was seen as important to the running of the business. Evidence was given that another employee had suffered a heart attack after which he required to recuperate for eight months. On his return he was facilitated with reduced hours. The Claimant would have been similarly facilitated had he required. The Claimant accepted in cross-examination that the Respondent had done its best to keep him.

The Tribunal is not satisfied that the Respondent acted so unreasonably that the Claimant's resignation amounted to constructive dismissal. Indeed, the Respondent appeared anxious to facilitate the Claimant to retain his services.

While that finding is sufficient to dismiss the claim, the Tribunal is also satisfied that the Claimant failed to air his grievances with his employer. Further, when, after his resignation, proposals were made that might have enabled him to remain in the Respondent's employment, the Claimant failed to give them an opportunity to succeed.

The Claimant put a lot into his employment and that he was important to his employer is evidenced by the Respondent's stated desire to retain his services when he resigned. However, on the basis of

the above, the Tribunal is not satisfied that his resignation amounted to a constructive dismissal and, accordingly, his claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

