

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

UD1000/2007

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Cagney BL

Members: Mr. R. Prole
Mr G. Lamon

heard this claim at Dublin on 5th February 2008
and 29th April 2008

Representation:

Claimant(s): The claimant in person

Respondent(s): Mr. Niall Beirne BL instructed by Martin E Marren, Solicitors,
10 Northumberland Road, Dublin 4

The determination of the Tribunal was as follows:-

Background

Counsel for the respondent outlined to the Tribunal that the respondent is a small wholesale confectionery company. The claimant had been a customer and he had his own business for a number of years. In 2006 the claimant asked to join the respondent. The claimant commenced employment in Wexford and was given free reign regarding the area. In 2007 the respondent decided that the claimant was not getting the business out of the area and the respondent decided to change his area in April 2007. The claimant then worked in Dublin, the northeast and a small area in Monaghan. He did not reach his targets and the respondent terminated his employment on 30 July 2007. The claimant has obtained alternative employment at a reduced rate of pay.

The claimant outlined to the Tribunal that the respondent employed him in April 2006. In September he was offered a permanent position as a representative in the southeast.

Respondent's Case

AF, MD told the Tribunal that the claimant was a customer of the company. The respondent distributed confectionery and sweets to cash and carry outlets. In early 2006 the claimant took up employment with the respondent, two weeks on and two weeks off. The respondent felt that the claimant was familiar with the business and could bring customers on board. The claimant did not complain about his area and he would earn €30,000 per year plus commission. During the initial months of his employment he did well and the MD was pleased with the claimant's turnover but in late 2006 he became concerned with the claimant's performance. In a letter to the claimant on 19 January 2007 he outlined his concerns to him.

On 12 March 2007 he met the claimant and told him that he was disappointed with the sales figures and the respondent could not sustain underperformance. Every help was offered to the claimant and he was given the customer list to help him to achieve sales. In April 2007 LC joined the respondent from another company and he had worked for the respondent previously in the southeast area. The claimant was assigned to Dublin, the northeast and a small area in Monaghan. On 13 April 2007 he telephoned the claimant from Spain and informed him that LC had taken up employment. The MD was not due back in the office for a week, and he felt it was appropriate to telephone the claimant to explain the situation. There was no indication that the claimant was disappointed with the situation. In a letter to the claimant dated 24 May 2007 he outlined his concerns with the claimant's sales for May and that he was prepared to extend his employment in a temporary capacity until the end of June 2007. He met the claimant on 30 July and he made it clear to him that he was dissatisfied with the sales performance and he was concerned that there was no improvement. The claimant told him that sales were quite and that it was not his best month. He did not have confidence in the claimant. He dismissed the claimant on 30 July, the claimant was disappointed, upset and accepted the situation for what it was and left the office. The claimant returned the company car some time later.

In cross-examination asked had he offered the claimant the position on 21 April 2006 he replied yes on a six-month trial period. On 4 September 2006 he was willing to take on the claimant but he was not entirely satisfied with his performance. He believed that the claimant would open new accounts, which he did in the southeast. Asked why the claimant was not going to be employed in the southeast region when LC was employed he replied that it was a commercial decision. Asked regarding the accounts in the northeast area he stated that there were seventeen active accounts.

Any meetings that the MD had with the claimant the claimant felt that he could achieve his targets.

Asked at what stage did he or any other employee of the respondent cold call he replied that they never actively cold called. The lines of communication were open at all times and the claimant's targets were reduced to allow him to develop new accounts.

Claimant's Case

The claimant told the Tribunal the respondent offered him a permanent job in April 2007. He was given seven calls and he got orders from two calls. He was not given enough time, assistance or help by the respondent. The area he worked in was underdeveloped and it was not beneficial at all.

It was a bad summer and ice cream sales were reduced by seven per cent during that time. On 24 May he received a letter from the MD. At no stage did the MD help him apart from giving him

account names and addresses. During 2007 he had discussions with the MD about his targets. When a new employee LC was taken on the claimant felt that he would no longer have a future with the respondent. Forty per cent of his business had been taken away and he was not given time to develop the area.

In cross examination he stated that initially when he was employed he worked two weeks on and two weeks off. He never disagreed with any targets that he was given. Asked if they were not unreasonable targets he replied as it turned out yes. He had difficulties in reaching targets but he always endeavoured to reach them. The northeast area did not generate business and by the time he was dismissed he had increased the accounts from seven to seventeen. His target was to generate ten new accounts per month. It was not his experience that confectionery sales increased when ice cream sales were down. When LC was employed he took forty per cent of the claimant's business away. He submitted daily sheets every month. He obtained alternative employment within three weeks of his dismissal and he does not receive commission.

Determination

Having heard the evidence in this case the Tribunal is satisfied that the targets, which the respondent set for the claimant, were accepted by the claimant and they were not contested by him. The claimant was made aware that failure to reach the targets would have implications for his continual employment with the company. The claimant received a written warning from the respondent on 24 May 2007. The Tribunal find that the dismissal was not unfair and the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

