

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD449/2007

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
Mr. D. McEvoy

heard this claim at Cork on 4th December 2007 and 21st February 2008

Representation:

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

Respondent: Mr. John Barry, Management Support Services (Ireland) Limited, The Courtyard,
Hill Street, Dublin 1

The determination of the Tribunal was as follows:

Respondent's Case

The company manufactures and distributes food ingredient products to its customers. Those products are intended to give colour, texture, and taste to food produced by other firms. The respondent is based in the greater Dublin area where it has its administrative offices and operating plant. It recruited the claimant as its technical manager in the autumn of 1999. His main role was to ensure that the correct mixture of ingredients was used in the products supplied to the respondent's clients. The managing director said that the claimant was a key member of staff who supported the sales team as well as having a "hands-on role" in the technical and quality control development. Up to the summer of 2004 the claimant was exclusively based on their premises and the witness described the working relationship between the company and the claimant as very satisfactory. The claimant was "well regarded and an important asset" to the respondent.

That relationship came under strain when the claimant indicated his interest to move to Cork and to remain on as technical manager. In agreeing to this conditional move the witness also expressed his misgivings to the claimant about it. He opted not to be "trigger happy" about the claimant's

situation and all parties would review the changed situation after half a year. In the meanwhile the claimant was expected to report for work for a minimum of two days in Parkwest where the technical section was based. However by October 2004 the managing director felt it necessary to air his displeasure to the claimant at the way “matters are progressing”. He listed a number of critical issues pertaining to the claimant’s work, which were not assisting the company to increase its sales growth and margins.

In March 2005 the managing director attempted to formally review the claimant’s move to Cork with him. While a face-to-face meeting did not take place at that time the witness did not concur with the claimant’s report on how the situation was developing. He again informed the claimant of his concerns by email on 5 May 2005. Around that time and subsequent to that email the witness received correspondence with negative comments about the aspects of work under the claimant’s supervision. By the time they met on 22 July the respondent had lost business which was less likely to have happened had the claimant been based in Parkwest. The witness detailed three main issues on that occasion to the claimant and impressed upon him to address them. However, the managing director felt that the claimant was in denial of those issues.

Prior to a further meeting on 11 August the managing director again emailed the claimant outlining his ongoing difficulties with the claimant’s non-permanent presence in Parkwest. He reminded the claimant that such an arrangement was still under review. By that time other staff members were undertaking jobs there instead of the claimant. The head of research and development and sales also participated at that meeting and like the claimant presented a prepared paper. The witness agreed with the head of research and development’s conclusions that his role as technical manager and input into the respondent was lessened as a result of his move to Cork. The managing director stated that nothing positive had been achieved from the respondent’s point of view by that move. A further meeting took place later that month to address ongoing issues.

The managing director described 2006 as a fairly traumatic year. The respondent was “trying to plug the holes” as staff from sales, research and development, and quality control left the company. In the latter part of that year the production and quality control managers and other staff were complaining about the claimant’s work and lack of support. The relationship between the claimant and the respondent was further damaged when he failed to attend a meeting on 14 December 2006 and other meetings. However the two met on 22 December and reviewed the past and current situation. The managing director indicated to the claimant that he was not happy “with the way things are going”. He followed up that meeting with written correspondence to him on 16 January 2007. Among the listed items the managing director clearly stated that the current arrangement of the claimant operating from Cork had not worked. That issue was the topic of their next meeting on 19 January.

According to the notes of the witness both himself and the claimant addressed fifteen issues on that day. Among those issues the managing director highlighted his intention to acquire an individual to undertake the job of technical manager on the company premises. The claimant could only offer at best two days there. The witness was satisfied that the claimant understood that issue and was under the impression that for the first time the claimant released how serious the situation had become. In follow up correspondence to the claimant on 25 January the witness made his position clear. That position stated that a technical manager had to be based in Parkwest and it was now time for the claimant to decide to accept that offer. It was the witness’s strong preference to retain the services of the claimant. A possible alternative role for the claimant was also mentioned.

During the course of another meeting on 31 January and in the absence of a commitment from the

claimant that he was willing to return to Parkwest on a full time basis the managing director gave him notice of his redundancy and sent him an RP50 form. The claimant was not willing to accept that situation and further communications and a meeting took place between them on 7 February with the witness still amicable to a satisfactory outcome both for the respondent and the claimant.

During cross-examination MD (managing director) accepted that the claimant had raised the issues of directorship and shares of the company but MD stated there was no agreement on these matters.

It was put to MD that his email (dated the 15 March 2005) did not raise any urgent issues with the claimant. MD stated that his email of the 5 May 2005 was evidence that he wanted to have a review with the claimant. MD stated that in or around this time there was also a problem with a product. In September 2006 there were also an issue between the claimant and the Production Manager over the level of support the claimant was providing to the Production Manager. MD put another employee in charge of the respondent's main customer instead of the claimant and he explained the reason for this to the claimant in September 2006. The Production Manager and the Quality Manager were both upset following an operations meeting in November 2006.

MD told the claimant on the 19 January 2007 that the position of Technical Manager in Cork was being made redundant. They discussed the claimant working as a consultant to the respondent.

Giving evidence the Sales Manager (SM) stated that the claimant had reported to him. SM did not have any major difficulties with the claimant when he was based in Dublin; however he was concerned when he heard the claimant's role was relocating to Cork. SM worried about the respondent receiving the same level of service from the claimant. The relocation of the claimant to Cork was on the understanding that the claimant would work in Dublin a minimum of two days per week. SM expected that there would be weeks where the claimant was in Dublin three or four days. When the claimant was first relocated to Cork he probably did two days per week in Dublin but after that SM was unsure. There were a few occasions where the claimant was in Dublin more than two days but this did not happen often.

In May 2005 MD emailed the claimant about the need to meet and have a review. SM shared MD's concerns. SM had a lot of respect for the claimant and his ability and SM delayed in carrying out the claimant's review in order to give him time to provide new customers over the following year to eighteen months. During the meetings in August 2005 a list of objectives was compiled for the claimant's role. There were continuing issues with these objectives. SM left the employment of the company in March 2006.

During cross-examination SM confirmed that he had attended six meetings between March 2004 and July 2004 regarding the claimant's role in Cork. He agreed he had been content to facilitate the claimant as the company wished to retain the claimant.

It was put to SM that the claimant was told by letter (dated the 29 July 2004) that the company would review the position after six months but this review did not occur until twelve months after the claimant had relocated to Cork. SM said he had given the situation every chance and that the claimant was aware of issues the company had.

SM had discussions with the claimant between July 2004 and August 2005 regarding problems raised by the Production Manager and the Quality Manager. SM asked the claimant how he intended to support the Production Manager and the Quality Manager.

Giving evidence the Production Manager (PM) stated that when she first started working with the

claimant he was based in Dublin and they had a very good working relationship. PM did not have any problems with the support she received from the claimant when he was based in Dublin.

In July 2004 when the claimant first moved to Cork, there were a number of initial issues and problems but these were resolved between them through communications. PM returned to work in March 2005 after being absent for a period on maternity leave.

PM provided examples to the Tribunal of situations where the claimant as Technical Manager was responsible for making decisions and the Quality Manager could not move things forward without the decision from the claimant. PM communicated with the claimant by telephone and described the taste and look of a product over the telephone for him to make a decision. Sometimes the claimant told her it would have to wait until he was present in Dublin.

PM stated that on average the claimant was present in Dublin for two days per week but that later started to become less than two days. Matters escalated and PM would sometimes have to make a decision because a customer was waiting on a product.

The claimant constantly telephoned PM and there were times she had to leave the production area to take the calls. Sometimes the telephone call was about a small matter such as a product price. This was not part of PM's duties.

PM and the claimant did not have meetings together but they did communicate about scheduling by telephone and email. PM brought certain things to the attention of SM but a lot of matters she did not bring to his attention. PM did not speak to MD at this time, as she did not want to cause trouble. At one point she told MD that there was a problem with communication and it was decided to hold a weekly operations meeting from November 2006. The claimant attended one such meeting.

PM stated that the "final nail in the coffin" was when the production line had to shut down for the first time. PM was also disgusted when she had to meet with Company O (a company the respondent did business with) instead of the claimant. He had asked her to meet with Company O. PM did not know what questions to ask of the company at the meeting. PM did not understand why the claimant was not at the meeting.

PM spoke to MD about the matter. In PM's opinion having the Technical Manager based in Cork was not working. In the current situation the Technical Manager is on site and it is a dramatic change. If PM has a problem it is solved straight away.

Giving evidence the Research Manager (RM) (at the time the claimant was Technical Manager), stated that the claimant telephoned him for certain information. Day-to-day issues were not part of RM's duties as his role was to develop projects and pass them along to the claimant. The claimant asked RM to input data onto the respondent's manufacturing software. RM used the claimant's login to do this as the claimant was the only person who had access to input data on the system. This was not part of RM's role.

RM's workspace was beside that of the Production Manager and the Quality Manager and he was aware of comments they made concerning problems they had with the claimant. Neither of them directly raised this issue with RM.

RM currently holds the position of Technical Manager and works on site. He could not carry out

this role if he was offsite as there are technical judgements that must be made if the Quality Manager has an issue. He also provides technical support to the sales team. He attends the operations meetings once a week and he interacts with staff on a daily basis concerning technical issues.

Claimant's Case:

Giving evidence the claimant stated that his role as Technical Manager was to design products for customers, meet clients and make cost-savings. The claimant enjoyed his role of developing products and interacting with PM. He became involved in many aspects of the company and he tried to support as many areas as possible within the company.

He also worked in the laboratory making recipes and despatching samples. When he first commenced employment with the respondent, the production area "looked after itself" but when PM arrived the respondent considered how the claimant could support production. The claimant also went on sales calls with the sales team to let customers know of the claimant's, and therefore the company's, technical ability. The respondent was technically stronger than other competitors. MD told the claimant to make as many sales calls as possible with the sales team. If the claimant was not visiting customers he was meeting with suppliers and sometimes such meetings could be abroad. Before the claimant moved to Cork he was designing products on briefs provided to him by the sales team. In 1999 there were 30 tonnes per week produced by 2004 production had increased to 100 tonnes per week.

The claimant decided to move to Cork for personal reasons. He met with MD in or around February/March 2004 and told him he was moving to Cork. MD considered the matter and discussed it with SM. When it was decided the claimant's role was to relocate to Cork, MD told the claimant he needed to communicate with staff in Dublin. They also discussed a salary increase, which MD agreed to. MD told the claimant he would propose to the Board that the claimant be co-opted onto the Board. This was subsequently refused but MD agreed to investigate the possibility of the claimant having shares in the company.

The claimant's role was advice based and he prepared a lot of samples. By basing himself in Cork he was able to reduce costs and generate new products. Another employee in Dublin was to take over some of the claimant's more laborious tasks and to maintain a floating role but with the priority of making samples. This was agreed with SM and MD.

The claimant relocated to Cork and there were no issues raised with him until he received the email from MD on the 15 March 2005. Until this email the claimant felt that everything had been working fine. He then attended the meeting on 22 July 2005 to discuss the issues. Between May 2005 and July 2005 the claimant was unsure what these issues were. MD and SM were reluctant to outline the issues to the claimant although he asked them to outline them and provide an opportunity for them to be reviewed again. The claimant subsequently attended the meeting in August 2005 and he prepared a document for this meeting. This document outlined what the claimant felt he had contributed in the year that he was based in Cork.

If PM had a problem the claimant advised her and he spoke with her regularly but his role was predominantly advice based. The claimant stated that he generally spoke to the Accounts Manager or another employee about pricing matters but in the event that both of them were not available he spoke to PM.

In November 2006 PM told the claimant, at an operations meeting, that she had issues with him. He asked that they talk through the issues after the meeting. When they met PM apologised to the claimant and said that she had no issues with him and that they worked well together.

The claimant was unavailable to attend the meeting with Company O as he had another meeting set-up for the same day. The Quality Manager should have chaired the meeting with Company O as production with Company O's product was halted due to a quality issue.

The claimant asked MD in or around October/November 2006 to hold a review meeting as his salary had not been addressed since 2004. They met on the 20 December 2006 and went through the claimant's contribution to the company and the interactions the claimant had with other staff in the company. MD raised the issue of communication problems. The claimant was unaware of any such problems before this meeting. They agreed to take some time and again meet to discuss.

On the 12 January 2007 the claimant received an email from MD regarding further concerns he had and the claimant responded. The claimant and MD met on the 19 January 2007 and the claimant stated that he wished to discuss his remuneration. MD asked the claimant if he was interested in consultancy work, as the company needed a person in Dublin. The claimant said he would think about it. However he subsequently received notice of his redundancy on the 25 January 2007. He thought it might be a cost-effective measure on the part of the company. The claimant did not have an opportunity before this to address the issues that MD had raised. The claimant and MD met after the claimant had received his redundancy notice to discuss other alternatives. The claimant gave evidence of his loss.

During cross-examination the claimant stated that the only agreed change to his role was that an employee in Dublin would prepare the samples for which the claimant would provide the recipes. It was put to the claimant that in the description of the role of Technical Manager it stated that one of his duties was to prepare samples and despatch them.

The claimant disagreed that he had been aware of any difficulties concerning his role from August 2005 to the time he was made redundant.

Determination:

The Tribunal carefully considered all the evidence adduced. The Tribunal accepts that a genuine redundancy situation existed in relation to the claimant's employment and within the meaning of Section 7 (2) of the Redundancy Payments Act, 1967. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)