

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

MN805/2007

UD1032/2007

against
Employer

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: Mr. T. Ryan

Members: Mr M. Murphy
Mr B. McKenna

heard this claim at Drogheda on 22nd April 2008

Representation:

Claimant(s) : Mr. Michael Egan BL instructed by:
Mr. Sean Sheehan, Aaron Kelly & Co., Solicitors, 44 Laurence Street, Drogheda,
Co. Louth

Respondent(s) : Ms. Brid O'Flaherty BL instructed by:
Ms. Anna Murphy, O'Reilly Thomas, Solicitors, 8 North Quay, Drogheda, Co. Louth

The determination of the Tribunal was as follows:-

Respondent's Case:

One of the co-owners of the respondent company gave evidence. He explained that the business was a franchise, with the Head Office in Cork, selling cash and carry tiles for domestic use. The respondent company was formed in November 2004.

The claimant was employed in September 2006 on a full-time basis. In August 2007 the claimant had an accident at work and was out on sick leave for over two weeks. The claimant was paid his wages and his bonus while out sick. The respondent also paid his doctor's fees. On the claimant's return to work he was given less manual jobs to carry out. The claimant was instructed not to lift any goods but the witness told the Tribunal that he had lifted boxes. The witness spoke to the claimant about it. The safety was looked at and changes were made after the accident.

The witness explained that it was clear from the company accounts that the company was in a negative position. It was obvious that costs had to be decreased and it was decided that staff numbers would be cut. The witness called in the claimant and explained the situation and told him that as he was that last person to be employed by the company, he was the first to be let go. The witness said that the claimant told him that he had not been happy working there and had been for a few interviews for alternative employment. The witness offered the claimant a reference and his name as a referee. They shook hands and the claimant left. When asked, the witness stated that he had no major issues with the claimant.

When asked, he explained that the staff numbers had depleted from four full-time and one part-time to two full-time and one part-time. The witness told the Tribunal that he was General Manager in another branch in Dublin and the financial situation was similar there. When asked, he stated that he had offered to pay the claimant two weeks notice and that he did not have to work out his notice.

On cross-examination he stated that he was not on the premises day to day and had a Manager employed who he was in daily contact with. He stated, when asked, that the claimant's accident had not been the reason for the claimant to be let go. He explained that his insurance would cover any claims made against the company. When asked, he stated that he did not know the excess on the respondent's insurance premium as it had been negotiated by the franchise owner in Head Office to cover the twenty-two stores in Ireland.

When asked, he stated that the decision to dismiss the claimant was made by himself and his partner and been given financial advice by his accountant. When asked, he agreed that his brother was the Manager in the store the claimant had been employed but he was not aware prior that the claimant was to be dismissed. When put to him the witness refuted that he had asked the claimant if he had sought legal advice and never said the claimant's behaviour was unacceptable. When put to him he stated that no one was hired after the claimant had been let go but that a member of staff from the Navan store did cover when staff in Drogheda were absent. When asked, he stated that he had not denied giving the claimant a reference.

When asked by the Tribunal the witness said that the employee from Navan had been employed after the claimant but had since left.

The other co-owner gave evidence. She explained that there had been a huge downturn in business and there was even talk of putting the company into liquidation.

On cross-examination the witness stated that Head Office advised them of what insurance company to use. She stated that the insurance company would look after the claimant's claim.

The Manager of the Drogheda store gave evidence. When asked, he stated that he had been aware of the claimant's accident. He stated that the first time he heard the claimant was dismissed was when the claimant told him himself. He told the Tribunal that the claimant said he was "going home" as he was "let go". They shook hands and the claimant left. The claimant did say goodbye to his colleagues.

On cross-examination he stated that the claimant had not told him why he had been selected to be dismissed. When asked, he stated that the claimant's injury from the accident had been severe. When asked, he stated that the claimant had performed light duties after his accident but that he may have asked him to help him put up some signs.

When asked by the Tribunal, he replied that he did not hire and fire staff.

The bookkeeper for the respondent gave evidence. She explained that she was not an accountant. She explained that there had been problems with the bank and no money to pay bills. When asked, she stated that she had originally worked four mornings a week for the respondent and now only worked one day a week.

On cross-examination she stated that there had been a downturn in business in 2006-2007. Monthly figures had dropped.

Claimant's Case:

The claimant gave evidence. He commenced employment with the respondent on September 25th 2006. In August 2007 he sustained an injury to his index finger and was absent from work for over two weeks. He returned a week earlier than he was supposed to. He did no lifting of goods on his return but was given signs to laminate and erect.

He was called to the office by the respondent's first witness who told him that he had been made aware that he (the claimant) had been discussing his injury claim against the respondent to customers. The co-owner was not happy and told the claimant that he was to be dismissed because of this. He had not been told it was because he was the last one in. He was given a week's notice but was told that he (the co-owner) would prefer if he left straight away. He told the Tribunal that he felt he had been dismissed because of his injury.

The claimant gave evidence of loss but could not produce any documentation to the Tribunal on the day of the hearing.

On cross-examination he stated that he was on a waiting list for a recruitment agency. He agreed that he had the respondent's first witness on his CV but had not received a written reference from him. The claimant stated that the respondent's first witness had said that he could get the customer to swear that he had been discussing his injury claim. He told the Tribunal that at the dismissal meeting he had been asked had he consulted a solicitor and had replied yes. He agreed that he had said that he had been looking for alternative employment. He explained that his commission had not been paid every week as sales were down but there was no talk of loss of profits. The claimant told the Tribunal he had written a contemporaneous note of the meeting. He agreed that the store was quiet after a sale but that he did have work to do.

When asked, he explained that he had been studying to become a Health Care Assistant at the time. He refuted that he had been studying at the cash register or in the office, he studied during his breaks. He said that his colleagues had been shocked when he told them he had been let go.

When asked by the Tribunal he stated that he had been told that a reference would be sent on with his P45.

Determination:

A downturn in business meant the respondent had to re-evaluate its financial position and a restructure of the company had to be made. The Tribunal finds that a dismissal had taken place and that it had been fair. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Loss having been established the Tribunal awards the sum of € 450.05, this being one week's gross pay,

under the minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)