

EMPLOYMENT APPEALS TRIBUNAL

Claims Of:
Employee

Case No.
UD111/2007
MN70/2007
WT25/2007

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. Patrick Hurley

Members: Mr. P. Pierson
Ms. E. Brezina

heard this claim at Portlaoise on 20th December 2007 and 27th March 2008 and 28th March 2008

Representation:

Claimant: Mr. Gareth Hayden B.L. instructed by Mr. Joseph Fitzpatrick &
Ms. Cathy Doyle, Smithwick, Solicitors, 43 Parliament Street, Kilkenny

Respondent: Mr. Dan Boland B.L. instructed by Ms. Anne Manning,
White And Company, Solicitors, Market Square, Abbeyleix, Co. Laois

The determination of the Tribunal was as follows:

Claimant's Case:

The claimant commenced employment with the respondent in 1983. In 1998 after an interview he was promoted to mart manager. At first he worked five days, at a later stage this was reduced to three days per week. The claimant continued in his position until 2002. A customer owed a sum of money to the mart and this was highlighted at every committee meeting. The Chairman at that time also owed money to the mart. Around this time the claimant spoke to the late Chairman who told him that there were rumours that he, the Chairman, owed money also and he warned the claimant to be careful about what he said. The claimant resigned following this conversation, as he felt victimised, bullied and harassed. He accepted that the customer owed a small sum of money but the Chairman owed five times as much. The Vice Chairman asked the claimant to withdraw his resignation to allow them to act on what he had said. The claimant understood this to mean they

would investigate what the Chairman owed.

Subsequently at the next committee meeting the Chairman spoke of rumours about him owing money. The committee did not ask the Chairman any questions about the money he owed. It was the role of the claimant and the secretary to collect monies owed. The claimant felt that he did not receive any support from the committee on this matter. He continued in his position as manager until July 2006.

The claimant informed the committee of his intention to take one week's leave in July 2006. Before the claimant went on leave he ensured matters at the mart were organised. Mr. F was to perform the role of Acting Manager in the claimant's absence. The mart was holding a clearance sale and a weanling sale on Thursday, 13 July 2006, during the claimant's leave period. The claimant had discussed the arrangements for this with the Acting Manager.

The claimant returned from annual leave on the 20 July 2006 and he returned to work on the 21 July 2006. When he met the Acting Manager he told the claimant that all the animals had been sold at the clearance sale. He also told the claimant there had been some confusion in the office on the night of the clearance sale.

The claimant spoke to the secretary in the office. She was very vague with the claimant but told him there was confusion at the sale and that the customers and the mart's committee were unhappy about the sale. The secretary also stated that the Veterinary Officer from the Department of Agriculture (hereinafter VO) was present at the sale. The secretary told the claimant that VO said he would stop the clearance sale unless the confusion was clarified.

The claimant explained to the Tribunal that each animal sold at a sale must have a blue card with the animal's details on it including the identification number of the animal, date of birth etcetera. All the information on the animal tags must tally with the blue cards and the information sheet that is given to VO. At the clearance sale on the 13 July 2006 VO had thought there was only one seller of cattle when in fact there were two. Once this was explained the sale continued.

The claimant had only vague details so he started to make enquiries about what had occurred at the clearance sale. He contacted VO who told the claimant he had not threatened to stop the sale. VO stated that once the confusion over the names of the sellers was clarified the sale proceeded.

The claimant spoke to the secretary a second time and this time she told him the problem was that the two sellers at the sale were cattle dealers. Cattle dealers cannot sell under a clearance sale, as they did not rear the livestock. However, VO told the claimant that the sellers were not dealers. One of the sellers did have a dealer number but it had been inactive for years. He was selling livestock on the 13 July 2006 from a herd on his own farm.

On the 24 July 2006 the claimant telephoned the Chairman. The Chairman told the claimant that no one was happy and that the clearance sale was a set-up. The claimant could not believe that he was accused of setting up a clearance sale for cattle dealers. The Chairman told the claimant not to even try to justify it. The claimant asked the Chairman to organise a meeting with the committee. The Chairman informed him a meeting was already organised for the 26 July 2006.

Following this conversation the claimant asked the secretary why he had not been informed of the upcoming meeting. The secretary told him she was uncertain whether or not the meeting was taking place.

The claimant attended the meeting on Wednesday, 26 July 2006. During this meeting he became aware that a meeting had taken place on the 19 July 2006 during his absence on annual leave. The meeting on the 19 July 2006 related to the clearance sale. At the meeting on the 26 July 2006 the claimant was accused of setting up the clearance sale with two dealers as the sellers. The claimant explained everything in detail to the committee and he pleaded with them to speak to VO and the Acting Manager. He wanted them to investigate because if they did not, he had nowhere else to go.

It was also put to the claimant at this meeting that he had not informed the committee of the names of the sellers prior to the clearance sale. Due a previous incident when a seller's name was stated in an advertisement it had been agreed that future advertisements would not state the contact details of sellers. The Chairman told the claimant at this meeting that the committee did not need to speak to anyone. The claimant could not believe this and asked them to speak to VO and the auctioneers at the sale. The claimant believed the committee had made up their minds and if they did not investigate the matter the claimant had no further avenues.

At the meeting on the 26 July 2006 the claimant also asked for the names of people who had complained about the sale although the Acting Manager had told him no complaints were received. The committee did not provide the claimant with names of anyone who had made a complaint about the clearance sale.

The claimant attended for work on the 27 July 2006 but left early. He felt he had not been listened to and he had been bullied and victimised. He felt there was no one he could speak to. The claimant wrote his letter of resignation. He attempted to contact the Chairman but was unsuccessful. The claimant submitted his resignation to the Vice Chairman.

The claimant had tendered his resignation with one month's notice. The claimant attended for work on the 28 July 2006 but left early and attended his doctor and was prescribed medication. He informed the doctor of the situation at work and that he had given his employer a month's notice. The doctor said she was not allowing him to return to work and wrote a sick leave certificate. The claimant submitted this to the respondent.

Two weeks later the claimant received a visit at home from two of the committee members who told him the whole matter was a mistake and they wanted to retain him in their employment. The claimant wrote a list of questions he wanted answered at the next committee meeting. His list included asking the committee to talk to the Acting Manager and the VO, asking the auctioneer about the format of the clearance sale and asking the secretary why she had not informed him of the meeting of the 26 July 2006. The claimant told the committee members at his house that if he received open, honest answers to his questions, he would return to work. The claimant considered this a good meeting and that the committee members would act on it.

The claimant did not receive a reply until two weeks later at another meeting with the two members. He asked if they had spoken to the auctioneer, VO and the secretary and they replied they had not. The claimant later discovered that according to the minutes of that committee meeting his questions were not read out. After this second meeting the claimant considered what he should do as he thought they had not taken the matter seriously.

One week later the claimant received a telephone call from a committee member asking him if he was returning to work. The committee member expressed to the claimant that it was his hope that the claimant would be returning to work but if not the committee needed to know so the position of

mart manager could be advertised. The claimant said he could not give an answer but the committee member pressed him for an answer by the following Wednesday. The claimant subsequently wrote a letter stating that he would not be returning to work. He submitted this to the secretary.

The claimant gave evidence relating to loss.

During cross-examination the claimant accepted his employer made three attempts to resolve matters after the meeting of the 26 July 2006 but he stated it was only after the first meeting at his house that he thought he might get answers. The claimant disagreed he had been unduly sensitive about the meeting on the 26 July 2006.

The claimant believed the clearance sale on the 13 July 2006 was the first time the mart had a clearance sale with two sellers. The information sheet for the office showed that there were two sellers and the board at the mart scrolled the names of the sellers during the clearance sale. The claimant accepted that customers may have thought there was only one seller from the advertisement but despite this all of the livestock was sold and none of it was returned.

Answering questions from the Tribunal the claimant said the board meetings were held every month and the claimant attended the meetings.

Giving evidence the Acting Manager (hereinafter AM) confirmed he deputised for the claimant when he was on annual leave. The clearance sale went well and the mart made a profit. AM did not receive any complaints about the sale. He believed that if the secretary had received any complaints she would have relayed them to him.

During cross-examination AM stated VO had enquired about the names of the sellers. AM highlighted to VO there were two sellers and both their names were on the information sheet. The sale continued. AM stated it was common for a VO to have certain queries.

Giving evidence VO stated that before attending the clearance sale he believed there was only one seller of cattle but the Department of Agriculture would not be concerned about the number of sellers as long as the correct details are provided on the cards. VO attends mart sales every week and he regularly has queries. At the sale on the 13 July 2006 VO spoke to AM who told him there was a second seller. VO spoke to the seller and confirmed he was selling cattle from a private herd. VO confirmed he had not been asked by the committee to verify whether the sellers at the clearance sale were dealers or private sellers.

Answering questions from the Tribunal, VO explained that a dealer could sell cattle straight away but must keep very stringent records whereas at the time of the clearance sale farmers had to hold cattle for 45 days.

Giving evidence Ms. R stated that she was the secretary at the mart from 1986 to 2005. She was also the secretary at the monthly Board meetings. Ms. R gave evidence that in the minutes she recorded the date, place and time of the meetings, the people present and the people absent. There was an attendance sheet at each meeting and each person present had to sign this sheet. At the start of every meeting the minutes from the last meeting were read. There was rarely an emergency

meeting but if there was, the minutes of the last ordinary meeting were not read at this. At the following ordinary meeting both the minutes of the emergency meeting and the last ordinary meeting were read and proposed and seconded separately. The Chairman signed the minutes of each meeting or if he was not at the meeting the Vice Chairman who would have chaired the meeting in the Chairman's absence signed the minutes.

Giving evidence the current secretary stated that she adopts the same procedure as Ms. R when taking minutes of the meetings. The secretary could give not recall when she became aware of the meeting on the 19 July 2006. She stated that she had not listed the people present at this meeting, as it was an emergency meeting. The secretary was instructed by the Chairman to mark down four items he wanted to make the committee fully aware of. The four items were as follows; that the claimant had not given enough notice of his holidays, there was an issue with the installation of a tank that the claimant had organised, the amount of credit was becoming too much and the issue of the clearance sale.

The secretary's recollection was the Chairman told her at the start of the meeting it was an emergency meeting and there was no need for her to list the people present but to list the items of the meeting. The secretary could not recall the committee members present at this meeting or whether or not she was told not to make a note of the discussion surrounding each item. The Chairperson did not sign the minutes of this meeting or the minutes of the meeting on the 26 July 2006. The secretary thought this might have been because he was very ill at that time. The Chairman was present at the meeting on the 14 August 2006 but she overlooked to have him sign the minutes then.

Respondent's Case:

The Chairman of Kildare West I.F.A. gave evidence to the Tribunal. He is also a farmer and attends a number of marts. In his experience there is usually a credible reason for a clearance sale, such as a farmer retiring. He has never seen an advertisement for a clearance sale that did not state the reason for the sale. From the advertisement the claimant placed in the newspaper for the clearance sale on 13 July 2006 the witness would have assumed that only one person was selling the cattle for sale. He also would have assumed that the cattle had only ever been on one farm. If he discovered there were two sellers or that the sellers were dealers he would be unimpressed. In his opinion the sale on the 13 July 2006 was not a clearance sale.

During cross-examination the witness said he would not consider the sale on the 13 July to have been a clearance sale because there was more than one seller. It was put to the witness that in a more recent advertisement in February 2008 the mart had specified there were two clearance sales but did not name the sellers. The witness replied that it seemed the mart had changed their practice but that at least from this advertisement a person could make further enquiries.

Giving evidence Mr. R stated that he was Vice Chairman at the time of July 2006. The Chairman became ill in September 2006. The Vice Chairman was present at the emergency meeting on the 19 July 2006, after the clearance sale. The committee was under the impression there was only one seller of stock at the clearance sale on the 13 July 2006 but when it was discovered there were two sellers a number of questions were asked.

The meeting on the 26 July 2006 was an opportunity for the committee to speak to the claimant about the clearance sale. The meeting concentrated on why people were misled about the clearance sale. The committee felt it had been misled about the clearance sale because they had made enquires to the claimant before his holidays about the seller and the claimant had said the seller was a man from Offaly. The committee was under the impression therefore that there was only one seller on the night of the sale. The committee had concerns that there were two sellers instead of one. This was put to the claimant at the meeting on the 26 July 2006 and the claimant told them he had viewed the stock of the second seller and it was fine.

All of the matters were put to the claimant in a civil manner. The claimant answered the questions put to him but he did not seem to know what the concern was about. The claimant became upset that the committee were reacting in the manner it did and that questions were asked of him. The claimant remained at the meeting until it finished.

The witness was very surprised to receive the claimant's resignation letter the following day, as he did not think that the meeting warranted the claimant's resignation. In light of the claimant's tendered resignation in 2002 and his subsequent return to work the witness was under the impression that the claimant's resignation in 2006 could be resolved.

Ten days after the claimant's resignation the witness and one other committee member attended the claimant's house for a meeting. The Chairman had requested that they speak to the claimant and approach him about returning to work. The claimant had a list of questions and he asked them to bring them to the next committee meeting. The witness stated that they dealt with 80% of the questions there and then in an attempt to resolve the situation. This meeting at the claimant's house lasted over one hour. The claimant asked them to bring the remaining questions to the Chairman and the committee. The witness stated that he gave the list to the Chairman. At the next committee meeting in September 2006 the witness told the committee he had met the claimant. The committee did not respond but listened to what the claimant's questions were.

The witness then went to the claimant's house a second time. The claimant asked about the committee's response to his questions and the witness told him the committee had not given a response but would consider his questions and respond to him then. The witness asked the claimant what it would take for him to return to work. The claimant replied that he would return to work if the Chairman and two committee members resigned. The witness told the claimant he would think about it and get back to him.

In September 2006 the mart did not have a manager. The witness telephoned the claimant and asked him if he had reached a decision about returning to work. The claimant wanted more time to consider this and the witness gave him a further week to do so. When he next had contact with the claimant, the claimant confirmed that he would not be returning to work. He had handed in his notice in the meantime and this was dated September 2006. The position of mart manager was filled from January 2007.

During cross-examination the witness stated that the secretary had contacted him about the meeting on the 19 July 2006. As he was not present at the clearance sale on the 13 July 2006 he only became aware at the meeting of the concerns in relation to the sale. He could not recall who else was present at the meeting. In his opinion from what he heard at this meeting the sale on the 13 July 2006 was not a clearance sale.

At the normal monthly meetings members sign in at the meeting this was not done in the case of the

emergency meeting on the 19 July 2006. The witness had no knowledge whether or not the Chairman asked the secretary to restrict her notes of the meeting.

It was put to the witness that the mart did not receive any complaints surrounding the clearance sale. The witness stated that this was not entirely true, as the secretary had told him that some of the customers found after they had purchased cattle at the sale that the cattle had in fact moved between farms. The mart does not keep a record of complaints but the secretary would deal with any problems and the matter would be raised at the next committee meeting. Some of the committee members knew one of the sellers as a dealer. The witness confirmed that the cattle this person sold at the clearance sale were under his own farm herd number.

The witness could not recall whether or not the claimant was told that the committee would speak to the VO and AM as the claimant suggested. VO was unavailable until the following week but he did speak with AM. A sub-committee was not set up to investigate the matter further.

Giving evidence a committee member stated that he was not present at the clearance sale on the 13 July 2006 but he heard about the sale a number of days later. He heard that there were discrepancies with the sale and that the committee had understood from the claimant that there was one person from Offaly selling cattle. The witness confirmed that the committee had asked the claimant for the name of this person but the claimant did not provide them with the name. The witness recalled thinking that the claimant did not trust the committee.

The witness believed that the clearance sale with two sellers on the 13 July 2006 was the first time the mart had such a clearance sale. The witness also stated that the problem with the advertisement for the sale was that it did not provide the information of the sellers. The witness was also informed that the cattle sold had moved farms and that the seller had a reputation as a cattle dealer. The witness stated that most farmers would be very wary about buying animals from a dealer. Although the Department of Agriculture may not consider the seller a dealer, farmers would consider that once a dealer is always a dealer.

The witness believed that the emergency meeting on the 19 July 2006 was an explanatory meeting. There were no decisions taken at this meeting. At the meeting of the 26 July 2006 there were a number of questions asked of the claimant that any employer would ask an employee. The claimant answered these questions and defended himself. The claimant defended not providing the names of the sellers to the committee, he defended not telling the committee there were two sellers and he said the sellers were not dealers. The witness did not think that this meeting warranted the claimant's resignation.

When the claimant's resignation was received the witness went to the meeting at the claimant's house with the Vice Chairman. Their primary concern was to get the claimant to return to work. The witness asked the Chairman was he willing for the claimant to return to work and the Chairman had replied very positively. The witness confirmed that a number of questions were answered for the claimant at his house and the witness thought that there were three questions left unanswered.

The witness attended the second meeting in the claimant's house. The claimant was asked to reconsider and return to work. The witness felt they had answered the claimant's questions reasonably. The witness left this meeting with the distinct impression that the claimant would think about returning to work and that he would return.

He was subsequently stunned to find that the claimant had submitted a letter of resignation. The witness reiterated that in his opinion the meeting of the 26 July 2006 was not a resigning matter and the meeting was not intimidating.

During cross-examination the witness confirmed that he and the Vice Chairman were appointed by the committee to discuss matters with the claimant and try to resolve matters. The witness thought the claimant overreacted about the meeting of the 26 July 2006 when he was asked a number of good management questions. The witness stated that the claimant “got up on his high horse and resigned.”

The witness felt the committee were made little of when the claimant would not share the name of the seller with them. He believed that due to this it was difficult to blame the committee for being perturbed.

Answering questions from the Tribunal the witness did not think the claimant had stated in his presence that he wanted the Chairman and two members to resign before he would return to work.

A second committee member gave evidence to the Tribunal that he was present at the meeting on the 26 July 2006 but not the meeting on the 19 July 2006. The witness considered the meeting on the 26 July 2006 to be a frank meeting with a lot of “straight talking”. The witness did observe that the claimant was under pressure that night but the witness was surprised to hear of his resignation. The committee elected the Vice Chairman and a member to discuss matters with the claimant and try to resolve the situation. During this time the witness met the claimant informally a number of times and told him he would like to see him return to his position.

During cross-examination the witness stated he was unaware on the 26 July 2006 of the identity of the people who had complained.

A third committee member gave evidence to the Tribunal that at the time of 2006 he was a cattle dealer. This enabled him to buy cattle for others but prevented him from bringing the cattle onto his own farm. The witness was present at the clearance sale on the 13 July 2006 to purchase cattle for another farmer. The witness knew one of the sellers and considered him a dealer. Although the witness was uncomfortable buying cattle from him he purchased two animals for slaughtering purposes. The following day the witness delivered the purchased cattle to the farmer. The farmer examined the cards for the two animals and expressed to the witness that he would prefer not to have them on his farm. The witness was present at both meetings after the sale and he was surprised to hear after the meeting of the 26 July 2006 that the claimant had resigned.

During cross-examination the witness stated that he had “spoken up” at the meeting on the 26 July 2006 when the claimant asked for the people with complaints to be identified. He raised the issue he had and that of the farmer he had bought cattle for. It was put to the witness that this had not been recorded in the minutes of the meeting. The witness stated he was unaware of what was recorded in the minutes.

A fourth committee member gave evidence that he was present at the meeting on the 26 July 2006 and he considered the meeting to be an ordinary, question and answer, meeting. He was not present at the meeting of the 19 July 2006 and the first he heard of the situation relating to the clearance

sale was at the meeting of the 26 July 2006.

Determination:

Having considered the claimant's and the respondent's evidence to the Tribunal and the evidence of witnesses on their behalf the Tribunal determine that the claimant only heard of the meeting of the 19th July at the meeting of the 26th July although there had been communication between the claimant and the secretary of the committee while the claimant was on holiday. The Tribunal is of the view that the committee's meeting of the 19th July, held in the claimant's absence influenced the conduct and outcome of the meeting of the 26th July to the detriment of the claimant. The Tribunal acknowledges that the committee were entitled to reprimand the claimant in respect of the dealers sale held on 13th July 2006 but would also emphasise that the circumstances surrounding that meeting indicate that it was neither minuted nor recorded nor conducted in a manner that would explain its purpose. The fact that the record shows that the meeting adopted no formal conclusion or motion reinforces the Tribunal's view in this respect. The meeting was of a secretive nature and it was not explained in evidence by the respondent why this should be so. It appeared to be an emergency meeting of an extraordinary nature. The Tribunal is of the view that the ultimate effect of this meeting was to prejudice the committee against the claimant at the subsequent meeting of the 26th July. At this latter critical meeting the claimant was not given an opportunity to explain his conduct or explain his reasons in holding the dealers' sale. It is acknowledged that the dealers' sale as so described was or may have been detrimental to the company's reputation and interests.

Following the definition of dismissal set out in Section 1 (b) of the Unfair Dismissal Act of 1977 as the termination by the employer of his contract of employment with his employer, whether prior notice of the termination was or was not given to the employer, in circumstances in which, because of the conduct of the employer, the employee was or would have been entitled, or it was or would have been reasonable for the employee, to terminate the contract of employment without giving prior notice of the termination to the employer, (in effect constructive dismissal) it is clear to the Tribunal that the onus is on the employee to attempt to communicate his grievances or concerns to the employer. The committee did not respond to the claimant's written list of grievances at the committee meeting in September 2006. The Tribunal would in this respect also advert to the claimant's evidence that in a phone conversation dated 24th July 2006 the now deceased Chairman of the company told the claimant not to even try to justify at the next meeting of the company the holding of a clearance sale for cattle dealers. It is the claimant's evidence that he was told by the Chairman that no one was happy with the clearance sale. Whether or not the negative sentiment against the claimant was widespread or justified, it is clear that the claimant was not given a proper or full opportunity to explain himself at the meeting of the 26th July. The claimant was not informed of the identity of the people who had complained about his handling of the clearance sale.

The Tribunal is of the view that the claimant has not made sufficient efforts to mitigate his loss. The Tribunal is unanimous in finding the claimant was constructively dismissed and award him compensation of €1,700 under the Unfair Dismissals Acts, 1977 to 2001.

The claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and the

Organisation of Working Time Act, 1997 were withdrawn during the course of the hearing.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)