

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

against

Employer

Under

CASE NO.

UD358/2008

MN321/2008

WT164/2008

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: Ms O. Brennan BL

Members: Ms A. Gaule
Mr J. Maher

heard this claim at Dublin on 21st July 2008

Representation:

Claimant : Mr Mark Finnan BL instructed by Ms Catherine Webberley, Wilkinson And Price, Solicitors, South Main Street, Naas, Co. Kildare

Respondent : Ms Mary Gordon BL instructed by Noel Smyth & Partners, Solicitors, 22 Fitzwilliam Square, Dublin 2

The determination of the Tribunal was as follows:-

Respondent's Case.

The Financial Controller and IT Manager gave evidence. She explained it was a family run hotel, the chain of command is owner to General Manager then the various department heads.

The claimant commenced employment in January 2007 as the Entertainment Manager. His role was to bring in gigs and run and set up these within the conference centre on the hotel grounds. Problems arose with the claimant's performance in relation to a show A that ran in July 2007. The claimant had to purchase and arrange seats for the conference centre. These seats should have slotted in. However, they had to hire carpenters to fit seats some of which were blocking fire exits. The support structure that the seats sat on during the concerts, bent when moved.

A number of problems arose on the opening night of show A. There was nobody trained to do collections apart from the claimant and there was trouble with seat numbers, pillars and sightline for the audience. Show A ran for six weeks and the problem with sightline persisted for four weeks. A second show (B) was staged in August 2007. Before the running of this concert a management meeting was held and the claimant was asked to address the issues that had occurred during show A. It was also decided to have unreserved seating at show B. The claimant did not solve the problems which had arisen at show A and customers still had sightline problems at show B. They had to refund a number of customers. The witness personally dealt with about seven or eight complaints. A profit was made on show B.

The claimant presented management with a costing for show C that was to run in the period on the lead up to Christmas, but production costs were not included in his costing. Another company was engaged to manage this show in liaison with the claimant, as the show was not cost effective. The claimant was removed from the running of show C and was asked to concentrate on another three up and coming concerts. The witness explained that business had been adversely affected when the claimant was hired as an event expert. She believed that the claimant had been given the support of a structural engineer when purchasing the seats. The chairs purchased by the claimant are now unusable.

During cross-examination the witness said she would have expected the claimant's team to check the individual seats. She said that the claimant's team was the conference porters and the sole responsibility of the porters was to set up the conference centre. Show A was scheduled to last for two weeks, but because of the successful ticket sales one of the directors of the company had made the decision to extend its run to recoup costs and to make a profit. The claimant determined the costs of tickets for all shows and show C had made a loss.

The witness told the Tribunal that there had been a profit on show A and B, however a loss had occurred on show C.

The Financial Controller of the Respondent's group gave evidence. The first function the claimant ran was Show A and he was aware of the complaints and hassle prior to and during the concert. Management held several meetings after show A where they went through complaints so they could make progress. It was the claimant's role to price gigs and to present management with the cost of concerts and ticket sales.

The Financial Controller got more involved in respect of show C and the additional three concerts. Show C was such a large expenditure. He was not at the claimant's original presentation of this show but the figures quoted had proved incorrect as they did not include running costs such as crew, lighting etc. The claimant was asked to get a partner to come on board for show C to share costs and run the concert. The claimant's new partner also provided the marquee. The claimant was removed from the show and was asked to concentrate on the three up and coming shows.

The Financial Controller said show C was not a success and that the claimant had been told before hand it would have to be successful or he would be out of a job. He confirmed that at the meeting in January 2008 at which the claimant had been dismissed no minutes had been taken.

Under cross-examination the Financial Controller said that he informed the claimant of his removal from show C in mid October. This was as a result of the partner company finding the claimant difficult to work with. He said he had congratulated the claimant on the profit from show A.

The third witness was an employee who works in payroll and HR. She was present at the dismissal meeting of the claimant's in January as a witness. At this meeting, it was made clear to the claimant that his employment was being terminated but the CEO told the claimant he could bring shows back to the venue as an independent contractor.

Claimant's Case:

The former Group Marketing Manager gave evidence. This witness commenced employment with the respondent in January 2007 and left in November 2007.

He was part of the claimant's interview process. He was asked to sit in at a meeting between the claimant and the General Manager. The claimant had been interviewed a number of times before this and appeared to have a good understanding of what was required of him. The claimant was told that he would have a team and would receive full support.

There were strong sales of tickets in respect of Show A that resulted in the restaurant, rooms and bars doing well, and it was a financial success. Show A was originally to run for two weeks. The decision to extend the show was made late in the process by a Director of the company.

Show B was a success both financially and operationally. There were unreserved tickets and sightline was not an issue as the audience were standing. Show C was first mentioned in March but the decision to run with it was taken at a late stage.

Under cross-examination the witness explained the reason he attended the meeting with the General Manager and the claimant in January was because the General Manager at that time was a Welsh man and had not heard of some of the artists being proposed by the claimant. At this interview the claimant's salary and commission were also discussed. He had not seen the Computer Aided Design (CAD) drawing of the conference centre that had been produced by the claimant during his proposal interviews. The witness was not part of the claimant's team and was not involved in the decision to extend Show A. He said show A was to run for two weeks, but was extended for three weeks.

The claimant gave evidence and said that he commenced employment with the Respondent on the 17th January 2007, and that the interview process was over a period of six months, during which he had nine interviews. At these interviews he had presented a Computer Aided Design (CAD) drawing of the conference centre showing 1800 seats but management asked for 2500 seats.

He did not receive a back up team nor PA as discussed in these interviews. The General Manager who hired him left the hotel shortly afterwards. In respect of Show A he was not allowed to do his job because of management interference. One of the directors requested him to put show A on for an extra week and asked the claimant to support him. The claimant was not happy with this decision but agreed to support the director.

Show B was a success and he was not aware of any complaints from customers. There had been a problem between the promoter and him, as the promoter had erected more pillars in the venue. As a result the claimant had to bring in his own Health and Safety and Production teams.

In relation to show C, he had been through the profit and loss and went to great detail and he felt it

was a no brainer. Then other departments within the hotel started booking the conference centre for dates, which had been put aside for show C. He was then asked to sell the show. One of the promoters he approached had a marquee and came on board. He worked closely with this company, but the owner of the company felt it would be more beneficial to them to run show C on his own. The claimant was removed from the production of show C in mid to late November and asked to concentrate on another three up and coming shows.

The claimant said the Chief Executive Officer reassured him in late November that the company wanted him to continue working with them. When he asked the Financial Controller of the group about his position he was told to make himself valuable.

He did not bring anyone with him to the meeting of the 21st January at which he was dismissed. The CEO had previously told him that the meeting was nothing important.

Under cross-examination the claimant said that he did not invoke the respondent's grievance procedures, as he had no time to do so.

In relation to the extension of show A, he had advised the director that he felt it was a mistake but would support his decision. He was aware of complaints that had arisen with show A. He reiterated that his original submission for the lay out of the conference centre was for 1800 but the director wanted 2500, which turned out to be 2185.

He had gone to Spain and Germany to source the seats for the venue, but the Director chose the seats from a local source. He could not get the director to make a decision in respect of the purchase of seats. The supplier eventually chosen could not supply the support structure for the seats.

He was paid a basic salary of €50,000.00 plus 7% commission of overall tickets sales less cost of show. This commission was paid to his personal bank account to be transferred into his company account.

He was told there was no need to stay on the premises on the 21st January 2008 and summarily dismissed.

Determination:

On the basis of the evidence adduced the Tribunal finds that the claimant was not afforded the support and back up to carry out his role. The Respondent relied on hearsay evidence. The methods of management and the notable absence of core personnel frustrated the claimant's ability to perform thus making the claimant's position untenable. No fair procedures were followed and the claimant was summarily dismissed.

The commission paid to the claimant was paid to a separate company, a separate entity distinct and apart from the claimant. In considering the award to be made to the claimant the Tribunal has only taken into consideration the salary payable directly from the company to the claimant.

Having carefully considered all the evidence the Tribunal is satisfied that the claimant was unfairly dismissed and awards the claimant the sum of €50,000.00 under the Unfair Dismissals Acts 1977 to 2001.

No issue was made during the course of the hearing in relation to the Minimum Notice and Terms

of Employment Acts 1973 to 2001 and the Organisation of Working Time Act 1997, so the claims under these Acts are dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

