

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
RP24/2008
UD23/2008
MN18/2008
WT6/2008

against
Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L
Members: Mr M. Murphy
Mr J. Moore

heard this claim at Navan on 9th May 2008
and 2nd October 2008
and 3rd October 2008

Representation:

Claimant(s) :

Ms. Joan Wisdom, S.I.P.T.U., The Mews, Town Hall, Lucan, Co
Dublin

Respondent(s) :

Mr. Gearoid McGann, Sweeney McGann, Solicitors, 67
O'Connell Street, Limerick.

The claims under the Organisation of Working Time Act, 1997 and the Redundancy Payments Acts, 1967 to 2003 were withdrawn during the hearing.

Respondents Case

The witness for the respondent gave direct evidence that he is chairman of the Respondent organisation (hereinafter known as the Board) which is an organisation set up between the Departments of Education and An Gaeltacht in the 1950s to promote books through the medium of Irish. The Board receives funding from the National Lottery and receives grants from the Department of an Gaeltacht. The board consists of twelve members and the witness has been chairman since January 2005. During the 1980s an executive was established which consisted of three full time positions. The claimant held a position on the executive during his tenure of

employment and was supplied with a contract in July 2004 which he did not sign. He was working without having signed the contract and the witness was informed of this when he was appointed chairman in January 2005.

The witness met with the claimant in Dublin in February 2005 to discuss issues which the claimant had with the contract. The claimant had two main difficulties with the contract. He wanted his salary to be linked to that of Assistant Principal in the Civil Service and he wanted a regular state pension as in the Public Sector. Resulting from this meeting the witness contacted the Department of An Gaeltacht concerning the issues raised by the claimant and was referred to the Department of Finance to make a case on behalf of the claimant. Representations were then made to the Department of Finance concerning the issues of pay and pension. The Department refused to link the claimants salary to that of Assistant Principal and the pension scheme issue would result in a slow, lengthy process with no guarantee of success. This response was conveyed to the claimant on the 6 December 2005. Also included with this was response was a new contract drafted by the Board with a request that it be signed by the claimant. The claimant contacted the witness on the 12 December 2005 expressing his unhappiness and disappointment with the new contract but he was not prepared to discuss it any further. Despite numerous attempts made by the witness through e-mails, phone calls and letters the claimant would not inform him as to the specific reason for his unhappiness with the contract.

The Board experienced ongoing difficulties with the claimants performance and in March 2005 the Minister for An Gaeltacht met with the Board and a review of publishing schemes operated by the Board was undertaken. Resulting from this meeting changes were made to the publishing scheme and to the manner in which it was operated but the claimant would not implement the Boards decisions. The Board were trying to improve the scheme for publishers but the claimant opposed their attempts. The claimant resisted any changes introduced by the Board. He did not produce a budget for a new scheme when requested to do so and reports that were sought by the Board from the claimant were never produced within the required times. Minutes of monthly Board meetings that were required to be provided by the claimant to the Board were not produced within the agreed times. Quarterly management accounts that were to be provided to the Board by the claimant were not provided. The claimant was instructed to meet publishers informing them of changes to the publishing scheme but he did not do so.

The witness went on to give further evidence that numerous attempts were made by himself and the Board to try and resolve the difficulties that existed but the claimant refused to accept that there were any performance problems and the Board could not get any satisfactory outcome despite its many attempts. Board members ended up carrying out work as it was not being done by the claimant. A lengthy disciplinary process took place and the Board continuously communicated its findings to the claimant in an attempt to resolve and rectify performance issues. Endless support was offered by the Board to the claimant from day one. Training was offered to the claimant and a vacancy in the claimants office was filled when it was requested to be by the claimant. The claimant was given numerous opportunities to express any grievance issues but ultimately the Board decided that the claimant was either unwilling or incapable of providing the commitment sought by the Board. The claimants performance was having a detrimental effect on the business of the Board and a decision was made to dismiss the claimant from his employment.

Under cross examination the witness confirmed that he met with the claimant in early 2005 and offered him a fresh start. The Board backed the claimant when he was in dispute with a publisher. The status of Assistant Principal sought by the claimant was refused point blank by the Department of Finance. The Board made representations regarding a pension plan for the claimant but were

informed that it would be a lengthy process. The claimant was always included by the Board and contributions from him were regularly sought by the Board. The claimant would attend meetings and not make any contributions despite the board's constant attempts to involve him. He would express his willingness to carry out tasks but they were not carried out.

In reply to questions the witness stated that cash flow statements requested by the Board from the claimant were not being provided. Money drawn down by the claimant in 2005 remained unspent in the bank account and the Controller and Auditor General was unhappy with this situation. The claimant was responsible for this money. He was drawing down money and it was remaining unspent in the bank account and one occasion approximately €750,000.00 was in the bank account.

Claimants Case

The first witness for the claimant gave evidence that he was a former director of Bord na Leabhar Gaeilge for a four year period. During his time working with the Bord the claimant was employed as a literacy officer. The witness found the claimant to be diligent and co-operative and they had a good working relationship. The witness also had a very positive relationship with the chairman but was not happy with his pension arrangements when he worked there. He did not work late or at weekends and confirmed that the board had authority over him but they did not act as his employer.

Under cross examination he confirmed that his role as director was proactive and he had no performance issues with the board. He proactively brought suggestions and policy documents to the board and these suggestions were either supported by the board or not. He confirmed that the board had tried to negotiate a better pay package for him but they were unable to do so. He confirmed that he was asked to leave the room when his pay was being discussed and felt this was the correct position to adopt by the board. He was never asked to work until 8pm and was always able to carry out his duties during normal office hours.

The claimant then gave direct evidence that he commenced employment with Bord na Leabhar Gaeilge in September 2000. His responsibilities included managing and progressing the board's affairs. He informed the board in relation to the publishing of Irish books and 80% of the board's monies were spent on publishers. He liaised with the publishers helping them market their books. It was important that the board had a good relationship with the publishers. He had a part-time secretary and the first board he served under allowed him to work on his own initiative.

A new board was appointed in January 2005 and there appeared to be a change of emphasis. The Minister attended the first board meeting and the new board appeared to take on schemes without any prior analysis of what they were hoping to achieve. The witness was given instructions by the new board and his views were not considered. His workload changed immensely and the message coming to him from the board was that he should do what he was told. He could not see the reason for the changes introduced and felt the changes created disharmony. Board members had different views and this made the situation chaotic. He received much more e-mails and communication from the new board and had worked off the same agenda with the previous board. This was not the case with the new board.

The witness went on to give evidence that he never disregarded clear instructions from his employer. He felt that the criteria put in place by the new board was useless. He was put under a lot of pressure as a result of changes introduced by the new board. Meetings were long and stressful and he did not deliberately fail to comply with deadlines. His office was without its full complement of staff from November 2004 until August 2006 and sub-committees were appointed without his

knowledge and he did not receive minutes from sub-committee meetings that he did not attend. He was asked to leave the room when his terms and conditions were being discussed and this action left him feeling in an alienated position. He was aware that there was over €700,000.00 in the bank account and the board were also aware of this. He was on sick leave when he received his letter of dismissal and the dismissal left him feeling frustrated and alienated as the Irish language community is a very small community. He commenced working for a different employer in July 2007 and is based in Belfast. This has created family difficulties as he has to stay away from home from Monday until Friday each week.

Under cross examination the witness confirmed that he received two solicitors letters from the previous board towards the end of their term concerning the non-signature of his contract. He received his list of duties and details of his post as temporary director for the board. He received his terms and conditions of employment when he was made permanent in Summer 2004 and confirmed that there was no difference in the duties he was asked to carry out in his new contract. He joined a trade union prior to 2005 and wanted the them to negotiate with the board on his behalf but does not know if they did so during the year 2005. The two issues he had with his contract were his salary grade and his pension. He did not disagree with his list of duties and he confirmed that he had received a letter from the board concerning issues the board had with his performance. He accepts that the were never furnished with details as to what was wrong with his contract. He discussed his problems with his union not with the other side.

The witness accepted he did not produce reports on time and did not reply to a letter from the chairman of the board asking for reports. He accepted that it was agreed that quarterly accounts would be prepared by him and confirmed that this did not happen up to April 2006. He confirmed that he received a warning letter about his performance in March 2006 and received a further warning letter in September 2006. Following a letter he received from the board in September 2006 he accepted that he did not apply any of the boards suggestions nor did he inform the board of any difficulties he had with the letter. He agreed that in March 2005 the new chairman had told him to attend training courses that may be of benefit to him and agreed that in September 2005 the chairman had told him to hire temporary staff if he saw fit to do so.

Determination

The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2001 succeeds and the Tribunal awards the claimant the sum of €4240.00 being the equivalent of four weeks pay. The Tribunal considered the evidence given in relation to the Unfair Dismissal claim and finds that the claimant failed to work in accordance with the directions given to him by the board. Under the circumstances the employer was left with no alternative but to dismiss the claimant. Accordingly the claim under the Unfair Dismissal Acts 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

