

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD1353/2006

MN894/2006

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: Ms. M. McAveety

Members: Mr. D. Morrison
Mr. P. Clarke

heard this claim at Sligo on 1st April 2008 and 15th July 2008

Representation:

Claimant: Mr. Patrick McEnroe, McEnroe & Walsh, Solicitors, 11-12 John Street, Sligo

Respondent: Ms. Aoife Newton, IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

Opening Statements:

At the beginning of the 1 April 2008 hearing, the respondent's representative submitted that the claim under the Unfair Dismissals Acts, 1977 to 2001, was out of time because the employment had ended on 12 June 2006 and the claim form had only been signed on 13 December 2006. The claimant's representative countered that the claimant had written to the respondent on 20 June 2006. The respondent's representative then reiterated that 12 June 2006 had been the end of the employment adding that the claimant had been asked to reconsider but that he had declined.

The claimant's representative told the Tribunal that 30 June 2006 was the date on the claimant's P45 but the respondent's representative dismissed this as being merely a tax document, said that the claimant had not been paid up to 20 June 2006 and that the date to which payroll was run was not indicative of the end of the employment.

The claimant's representative submitted that it was remiss of the respondent not to have its documents at the hearing. The respondent's representative said that she had booklets and that the respondent could give oral evidence as to the claimant leaving on 12 June 2006.

Having referred the Tribunal to a letter from the respondent dated 14 June, the claimant's representative said that he had been ambushed and caught flatfooted. He said that he wanted time to consider, that he should have a chance to address this issue properly by way of legal research and that he wanted to make written submissions.

The respondent's representative submitted that it was a net issue and, addressing the fact that it had not been in the respondent's notice of appearance, she said that the notice of appearance had been done by a colleague. However, she added that she was sure that the claimant's representative knew the date by which he was filing and she submitted that the date of 20 June 2006 had been plucked from the air.

The claimant's representative now referred the Tribunal to a legal textbook saying that, where words of resignation are used, context is everything, that there had been heated exchanges and that the claimant had been suffering stress.

The hearing was then adjourned to allow both sides time to send written submissions and comment on each other's submissions before resuming on 15 July 2008 when both sides were told to be fully prepared with all necessary witnesses and documents.

Respondent's case:

The ex-head greenkeeper (BB) gave evidence that the claimant came in at 7 o'clock on 12 June 2006 and told him of his decision to resign, because of his treatment by the club. He said that he asked him to reconsider, but he answered no. He never saw him again. He told the Manager (HO'N) when he came in to work about the claimant's resignation. He said that he wrote a note about the incident on the day and typed it out later. He thought that the original note was probably destroyed. He didn't ask the claimant why he resigned, because he wasn't dealing with his overtime issues directly, it was outside his remit. He said he had no doubt the claimant was resigning, even though he may not have used the word "resign". He asked him to put it in writing but the claimant refused. He interpreted it as a resignation because he handed in his keys, and said that he wasn't coming back.

The Manager (HO'N) gave evidence that BB told him the claimant had resigned. He asked BB to put it in writing. He then wrote to the claimant on 14 June 2006 asking him to reconsider, and giving him a week to respond. He knew there had been an issue with him refusing to work on a particular weekend. The claimant did not work again after 12 June 2006, so he had no doubt that he had resigned. The claimant wrote back to him on 20 June 2006 saying he had been constructively dismissed. He said he did not document his meeting with BB. He accepted his resignation, but felt he deserved to be given an opportunity to reconsider. A disciplinary meeting was due to take place the following day but never happened. He said that he got advice from an IBEC HR adviser on the matter and discussed it with the Management committee.

Respondent's closing submission:

Section 8, (2) of the Unfair Dismissals Acts, 1977 to 2001 cannot be ignored. The claimant himself admitted that he resigned on 12 June 2006. The claimant talks about his state of mind between 12 June and 20 June 2006, but nothing significant took place between these dates, so there was no difference between the 12th and 20th on this issue. There was no clarity as to what triggered the letter being produced on 20 June 2006, except that his friends and family had advised him about it. It is clear from his letter that it reflects what already happened on 12 June 2006. the company's letter of 14 June 2006 gave him an opportunity to reconsider, but he declined this, nor did he deny that he had resigned on 12 June 2006. the Tribunal's decision should be confined to section 8, (2) of the act.

Claimant's case:

The claimant gave evidence that he went to work on 12 June 2006, became agitated, and was annoyed at not being given time off for work he had done at the West of Ireland Golf tournament. He said that he handed in his keys, gathered his gear, and left. He was asked to put it in writing, but he didn't reply, and said that he did not know what he was supposed to put in writing. A threat had been made to him that his sick leave would be "taken in hand" if he did not drop the issue of the time off. He met HO'N and BB in mid May 2006, and was intimidated by BB's presence. After he left, he felt that he had made a mistake and said that if the club had contacted him, he would have gone back to work, as long as they changed his work agreement.

He was asked why he never mentioned in his letter to the company that he had made a mistake, or that if the club had contacted him to meet them, he would have gone back to work. He said he knew there was no going back, that the club had not addressed the issues. He said that he never mentioned the word resign at the meeting on 12 June 2006, but it was pointed out to him that it was on his letter of 20 June 2006, and that this letter reflected what had already happened on 12 June 2006. He did not work at the club after 12 June 2006. A family friend had helped him write the letter to the club. He felt that he had been treated disgracefully, had been threatened, and had nowhere to go. He decided to resign after he spoke to his friends and family. He wasn't sure after 12 June 2006 if he intended to go back, but was waiting for the club to ring him.

He said that he did not resign on 12 June 2006, nor did he go to the subsequent disciplinary meeting, as he was in the wrong frame of mind to do so. Even though his letter stated that he had resigned, it was not a "real" resignation. He said that he understood that his application should have been with the Tribunal by 11 December 2006 (based on having left his employment on 12 June 2006), but was not thinking straight at the time.

Claimant's closing submission:

The claimant was an exemplary employee over nine years. Issues arose in 2002 about his contract of employment, but the club ignored his complaints. Right up to the date of his leaving, there was ample cause that led to his departure. The club was causing him to undergo extreme stress and he couldn't handle it, but the club ignored this. He felt that he had nowhere to turn so he walked off the job. The club saw it as an opportunity to get rid of an employee who was a nuisance to them. The letter from the company on 14 June 2006 was not a genuine offer, but a cynical attempt to resolve the matter for their own ends. An employee is entitled to serve notice of his termination of employment when he is in a high state of anxiety. He acted honestly, and procrastinated up to the last minute because it would heighten his level of stress again.

Determination:

Under Section 8.(2) of the Unfair Dismissals Acts, 1977 to 2001, a claim by an employee must be notified to the Tribunal within 6 months of the date of the dismissal.

“A claim for redress under this Act shall be initiated by giving a notice in writing (containing such particulars (if any) as may be specified in regulations under section 17 of this Act made for the purposes of subsection (8) of this section) to a rights commissioner or the Tribunal, as the case may be, within 6 months of the date of the relevant dismissal and a copy of the notice shall be given to the employer concerned within the same period”

Under Section 7.(2) of the Unfair Dismissals (Amendment) Act, 1993, the Tribunal has the discretion to extend the period of 6 months to a period not exceeding 12 months if the Tribunal is satisfied that exceptional circumstances prevented the giving of the notice within the 6 month period.

- (a) within the period of 6 months beginning on the date of the relevant dismissal, or
- (b) if the rights commissioner or the Tribunal, as the case may be, is satisfied that exceptional circumstances prevented the giving of the notice within the period aforesaid, then, within such period not exceeding 12 months from the date aforesaid as the rights commissioner or the Tribunal, as the case may be, considers reasonable,

The claimant in this case had pleaded that there are no exceptional circumstances that arise in this case and accordingly, the provisions of section 7.(2)(b) do not apply.

Having carefully considered the evidence of both parties presented to the Tribunal, the Tribunal are satisfied that the Claimant resigned on the 12th June 2006 and that the effective date of dismissal was the 12th June 2006. The notice issued to the Tribunal on 19th December 2006.

Accordingly the Tribunal finds that the claim under the Unfair Dismissals Acts, 1977 to 2001, is out of time.

As this is a case of constructive dismissal, there is no entitlement to minimum notice. Therefore, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

