

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

- *claimant*
UD942/2008

MN877/2008

against

Employer - *respondent*

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. P. O'Leary B L

Members: Mr M. Murphy
Mr O. Nulty

heard this claim at Drogheda on 28th January 2009

Representation:

Claimant(s) : Ms Rosemary McKeown, Citizens Information Centre, 4 Adelphi Court, Longwalk,
Dundalk, Co. Louth
Ms. Marie Hayes, Citizens Information Centre, 4 Adelphi Court, Long Walk,
Dundalk, Co Louth

Respondent(s) : In person

The determination of the Tribunal was as follows:-

Respondent's Case:

One of the two Directors (hereafter known as Director K) gave evidence. The company was involved in supplying dry goods to hotels and restaurants. There were 3 shifts – 4.30 am to 2.00 pm (2 staff), 8.00 am to 6.00 pm (3 staff) and 6.00 pm to 2.00 am (4 staff). The claimant was employed on the night shift Manager.

No one was to be let go and staff were informed on either the 2nd or 5th of February 2008 in the canteen. Most of the staff seemed okay about it but the claimant was not and was offered the same position on the day shift and with the same pay.

The claimant needed time off to organise his family and was given a week off paid leave. He was supposed to return on the day shift on February 25th 2008 but arrived for the night shift. He refused to work the day shift. The following day there was a meeting with the claimant to try and resolve the issue but to no avail. He locked himself in the office and would not come out. His colleagues went into the canteen. When he eventually emerged he and all the staff were sent home. The witness, the second Director (hereafter known as Director S) and the General Manager remained.

The following day the claimant said that he would work one week on the day shift. However he continued to turn up for the night shift even though there was no work for him. They again tried to resolve the situation but could not. The claimant's employment was terminated on March 17th 2008 as he was totally uncooperative and would not work with the respondent company.

On cross-examination he agreed that the claimant had not had a written contract of employment. The claimant was hired in 2003 and promoted in 2004. In 2008 a person was hired as General Manager to analyse the company's structure. A letter dated February 26th 2008 from the claimant was read to the witness. The claimant agreed to work a week of day shifts but was not able to work day shifts after that due to his family situation and wanted the changes in his employment in writing but stated that he said that he was willing to help in the introduction of the new changes.

When asked why the claimant was dismissed, he replied that the respondent needed staff to help and facilitate with the changes but the claimant would not and also had an aggressive attitude having locked himself in the office. When the claimant had locked himself in the office, he had not been present but had received a call to come to the premises. He had given the claimant warnings in the past.

The witness stated that he could not remember if he was in the office at the time the claimant was dismissed. He did not remember clicking his fingers at the claimant when telling him to leave and could not remember letting the claimant go but if the claimant said he did then he must have.

The second Director (S) gave evidence. She explained she had overseen staff and administration and Director K was in charge on logistics. The company was running at a loss and it was decided to cease the night shift. The General Manager was hired in 2008 to oversee the stores. He told the witness that he was having problems with the claimant. The staff were told in the canteen in February 2008 that the night shift was to cease. The claimant was present and no one said they had a problem with it as no one was to lose his or her job. The existing day shift Manager was moved to another location in order for the claimant to be offered the position. He had worked the day shift in the past.

When the claimant was offered the new position he did not seem to have a problem with it until the following week. He needed and was given a week off to organise his family situation. He said he would return on the day shift and was rostered for the third week in February. On February 25th 2008 the claimant arrived for the night shift instead of the day shift. She told him he was to start the day shift the following Monday. He said that he was sticking to his normal shift. He locked himself in the office. She called the General Manager and Director K to come in, this was around 9.00 pm. The staff went to speak to the General Manager. They could not get any work done. Eventually the claimant came out and went home. The following evening he brought in his letter dated February 26th. He was told he still had a job but he kept asking for his terms and conditions and wanted to continue the night shift. She told him it had ceased and she could not afford to pay

him for a night shift. The next day he again arrived for the night shift.

For one week he worked the day shift but said that he could not continue doing it. He was scheduled to work days the following week but did not turn up or make any contact. When he arrived back, Director K and General Manager were present. On March 18th 2008 she gave him a letter, said that they could not go on like this, that it was not financially viable to keep the night shift going and let the claimant go.

The following day he arrived and wanted a letter to state why he was dismissed and wanted his P45 straight away. She told him it would take a week. The claimant got quite aggressive and agitated and the witness had to contact the Gardaí. He did not believe she had rung them and she asked him to speak to them over the telephone. He left before they arrived.

On cross-examination she said that the General Manager was hired to oversee possible changes in the business. He spoke to the claimant about the changes but the claimant would not cooperate. She was told that the claimant was very difficult to work for. The claimant was the spokesman for the night staff and would come to her with any of their problems. She could not say when the night shift wound up but thought it was in August 2008. When asked why the respondent had advertised for a night shift Manager in June 2008, she replied that it was an advertisement for an evening shift Manager. The claimant had asked for a contract for a night shift Manager but there was no post. He was given 2 verbal warnings in February 2008 for not turning up for 2 shifts, the General Manager was present at the time.

When the claimant had originally asked for a night shift post, the witness created it for him. She he tried to resolve the matter of the day shift 3 times with the claimant. The General Manager and Director K were present when she dismissed the claimant. Director K was present when she rang the Gardaí.

Claimant's Case:

The claimant gave evidence. He was employed as a night shift Manager with 3 staff. The General Manager had informed him there would be changes which surprised him.

On February 15th 2008 he arrived for work. A co-worker informed him that from Monday on he was to work the day shift. He went to the office, rang the General Manager, asked to meet him, was informed that the shifts would rotate, one week of nights, one week of days and was offered the day shift Manager position. The claimant told him that he did not think it would work.

On February 25th 2008 he returned from a week's paid leave for his normal shift at 6.00 pm. Director K arrived and asked why he was there, as he was not supposed to be there. He had agreed to take a week off but had not agreed to the change in his shift. He was told to go home and return the following day at 8.00 am but he asked how could do it as he needed time to rest. He also asked for a written contract of employment.

The following evening he arrived for his night shift the following evening. He was in the office; Director K entered the premises and told him to get out. He asked to speak to the General Manager and posted his letter dated January 26th 2008 through the letterbox but Director K took it. The claimant said that he had locked himself in the office as he wanted to get a signature on his letter. He opened the office door, Director S had just arrived and told him there was no night shift. The staff were taken aside and officially informed of the changes, the claimant was not allowed to go

with them. He was asked to do one week of days and then see how he got on.

While working on the day shift he found irregularities and informed the General Manager. He was asked to work on the bank holiday, March 17th 2008 but on his arrival he found there was nothing for him to do. He contacted the General Manager and informed him. The General Manager said he would check it out and get back to him, when he received no reply he went home. The following day he arrived for his shift. He noticed a new chart on the wall. The General Manager and Director K arrived and told him to go home. Director K was clicking his fingers while telling him to get out and was told he would get his papers in time.

The following day he asked for a letter for the Department of Social and Family Affairs. Director S told him to get out before she called the Gardaí. He said that he had never received any verbal warnings.

The claimant gave evidence of loss.

Determination:

The Tribunal determines that the claimant was dismissed when the respondent failed to put his name on the new rota. This was confirmed when the claimant was told to go home. The Tribunal deems the actions of the employer constituted an unfair dismissal. Accordingly the Tribunal awards the sum of € 16,000 under the Unfair Dismissals Acts, 1977 to 2001.

Loss having been established the Tribunal awards the sum of € 2,129.32, this being four weeks 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)