

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD959/2008,MN901/2008
WT400/2008

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: Ms K. T. O' Mahony B.L.

Members: Mr D. Hegarty
Mr D. McEvoy

heard this claim at Cork on 26th February 2009

Representation:

Claimant : M.J. Horgan & Sons, Solicitors, 50 South Mall, Cork

Respondent : Diarmaid Falvey Solicitors, Church Street, Cloyne, Co Cork

The Tribunal was informed at the outset of this hearing that the respondent was currently in receivership. The respondent's solicitor had received short instructions from the receiver who had no involvements in the events giving rise to the claim herein. The respondent indicated it would accept responsibility for all correspondences on this case.

The appeals under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and the Organisation of Working Time Act, 1997 were withdrawn.

The Tribunal was also told that a statutory redundancy lump sum had been paid to and accepted by the claimant on 3 June 2008 as a result of his termination of employment. The respondent has been given and also accepted a rebate from the Department of Enterprise, Trade, and Employment on that statutory amount.

The determination of the Tribunal was as follows:

Respondent's Case

The General Manager of the respondent golf resort was appointed to this position in September 2007 when the claimant was absent on sick leave but he was familiar with the details of the claimant's employment. The claimant returned to work in April 2008 following an absence of several months due to ill health. During the claimant's absence his deputy manager took on the role of seeking new membership, which formed part of the claimant's duties. The claimant had retained his position as director of golf during his absence and upon his return to work. However, the golf industry had changed and due to business levels and revenue a financial decision was taken by the respondent to make the claimant redundant, effective from June 2008. A genuine redundancy situation existed and there was nothing personal in the decision. Attempts had been made in early 2008 to renegotiate the claimant's salary.

Claimant's Case

The claimant commenced employment with the respondent on 1 December 2004 as director of golf. When he started it was a green-field site and he helped with the setting up of the golf resort and then managed and promoted it. He was responsible for the golf section and the staff in it. He reported to the General Manager and owner. DX was his deputy/assistant. In July 2007 he was diagnosed with a very serious illness, which necessitated his absence from work for several months. During his absence he had some involvement with strategy and financial planning for the golf resort but due to his continuing health issues his participation in the management of the golf lessened during the period. However, he retained his position as director of golf. In January 2008 the claimant was offered new terms and conditions for his future employment. He refused a decrease in his salary to €25,000 and the respondent then offered €35,000 plus a commission on membership. However, he was not given an opportunity to either accept or reject that offer.

In early 2008 at the respondent's request the claimant took unpaid sick leave until he was fit to resume his duties on a full-time basis. However, when he was fully fit to resume his full-time position in April 2008 he was not encouraged to do so and at the respondent's suggestion he worked two days per week instead. However, the claimant found himself in a difficult position as he was receiving instructions from his deputy manager, who had been promoted and whose title had changed in his absence to Secretary Manager. By e-mail dated 13 May 2008 the claimant brought his concerns about this to the attention of the General Manager. In the same e-mail he raised his concern about his part-time status. In reply, the general manager assured the claimant that he was still director of golf and also stated that revenue was a problem and that the viability of the golf section and all those concerned must be considered. On 27 May the claimant was made redundant and was told that for the respondent to do otherwise would be unfair on those who had taken over his duties during his absence.

Determination

A redundancy situation existed in the respondent's business. From the evidence adduced the Tribunal is satisfied that the claimant's position still exists in the respondent company and the duties attached to the position are still ongoing. The respondent failed to show it was guided by any fair or reasonable criteria in selecting the claimant for redundancy. Accordingly, based on the evidence before it the Tribunal finds that the claimant was unfairly selected for redundancy and the claim under the Unfair Dismissals Acts, 1977 to 2001 succeeds. The Tribunal awards the

claimant asum of €38,000.00 under the Unfair Dismissals Acts, 1977 to 2001. The prior payment of €4,836.00, which the claimant received in respect of redundancy, is to be deducted from this sum, leaving a net sum of €33,164.00 payable to the claimant.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

