

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD654/2009
MN666/2009

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. D. Morrison
Mr. M. McGarry

heard this claim at Castlebar on 9th September 2009
and 20th October 2009

Representation:

Claimant: Mr Alistair Purdy, Purdy Fitzgerald, Solicitors, Kiltartan House, Forster Street, Galway.

Respondent: Liam J. Sheridan & Co, Solicitors, Unit 9 The D-Mek Centre, Ballina, Co. Mayo

The determination of the Tribunal was as follows: -

Claimant's Case

Prior to the claimant's appointment he worked for the respondent on a voluntary basis as the Secretary and then the Chairman in conjunction with his full-time job as a postman. The claimant was appointed as General Manager in 2007 reporting to the then Secretary (P.J.).

The Department of Environment agreed to fund a Management Scheme for all group water schemes for an initial period of two years. The claimant applied for the position as General Manager and was successful and signed a contract for 3 years.

The residents in the area set up a committee because they were unhappy with the Board and the General Manager. A meeting was arranged to air the grievances but the meeting had to be cut short due to the heckling from the members of the floor. The claimant was happy in the position until the then Board was ousted and replaced with the members of the committee, his working life

subsequently deteriorated. One week before the AGM the claimant was called to a meeting and advised by the new Chairman to resign and that a letter should be read out at the AGM informing the members of the claimant's resignation.

The claimant's duties were divided into outdoor and administration work, it became clear that the new Board would be taking over all of the administration work. The Board stopped communicating with the claimant and effectively ostracised him, as a result the claimant had to take 3 weeks off due to stress.

The claimant was due to meet the consultant engineer (J.D.) to discuss joining two water pipes on the 24th of July 2008. The claimant arrived at the destination with the engineer (S.L.) and waited for the consultant engineer (J.D.) to arrive. When J.D. and the Chairman (S.G) arrived they drove right by them but the Treasurer (T.C.) stopped and advised the engineer who was in the car with the claimant 'whatever business you have with him, do it now because we won't be talking to him.'

At a meeting the members of the scheme accused the claimant of "running the office from his kitchen table," and declared he had "no business being at the meeting." The Assistant Secretary stated that the claimant "had no authority and to pull in his horns." As a result of the bullying the claimant took leave. On his return on the 18th of August the claimant discovered that the locks had been changed by the Chairman (S.G.) on the gates to the reservoir.

As a means to resolving the situation the claimant wrote to the Board stating that the working relationship had broken down and suggested mediation between the parties as a way to move forward. The response was a letter dated the 26th of September asking the claimant to attend a meeting on the 1st of October and also requesting a copy of his contract of employment, the meeting did not take place and the Chairman already held a copy of the claimant's contract.

The claimant was called to a disciplinary hearing on the 9th of October as a result of the Board calling the Gardai due to some pages missing from a minute book from 2000. The claimant could not attend that day and received an e-mail in reply from the Secretary (C.S.) suggesting he resign with some "honour." The claimant was willing to meet with the Board and had previously answered any questions in regard to the missing pages.

A motion was made to sack the claimant but it was not passed, instead the claimant received a letter on the 12th of December notifying him that he was being put on lay-off, this is the claimant's dismissal date.

Claimant Cross Examination

In relation to the missing pages of the minute book, the claimant was instructed to remove them by the then Chairman (A.J.), the claimant did not see the harm in removing them as they were of no importance.

The claimant's contract of employment was issued to the Board by the National Group Water Scheme Federation and approved by the Board after the claimant had stepped down to take up the position of General Manager. The claimant's contract was of three-year duration even though funding was only guaranteed for 2 years by the Department of Environment, this was because the funds and position were to be re-negotiated after two years not terminated.

The General Manager position was created to oversee the transition of all the local water schemes into an amalgamated Group Water Scheme, the claimant agrees there is a life span to the position

but there would be a necessity for the position for the next twenty years.

The letter informing the claimant that he was being laid off stated that he would be re-engaged when he was required; the claimant does not believe this would have ever happened. The Treatment Plant was held up due to legal proceeding but there was plenty of other work available for the claimant during this time. There were no formal reporting procedures in place, the claimant generally informed the secretary of any issues or developments as his relationship with the chairman had broken down to such an extent.

The treasurer (P.J.) at the time of the claimant's appointment was present when the motion was made by the Secretary to sack the claimant. The current Chairman, Treasurer and Secretary were always complaining about the claimant so proposed the motion to dismiss him. The motion was not passed so they decided to put him on lay-off a few weeks later, this decision that was not put to the Board.

The Development Officer (P.C.) for the Mayo area of the National Group Water Scheme Federation gave evidence and confirmed he gave advice to the respondent on any issues that might arise. The General Manager position was created because a co-ordinator would be needed when the four water schemes were amalgamated into one. The basis of the funding was for two years with the expectation that the group schemes would be willing to take over employing the manager after the funding ceased. The development officer attended a meeting with the respondent and informed them of the availability of the funding for the General Manager position and the expectation of continuous employment after the funding had ceased. There are funds available for the Operation and maintenance of the scheme i.e. wages and salaries and also for the operation of the Water Treatment Plant.

Following the interviews the panel recommended the claimant for the position. The National Group Water Scheme Federation drafted the contract of employment for all the General Manager positions in the country. The claimant had no input into the contract. There are three similar Group Water Schemes in Mayo that still employ a General Manager, the Development Officer believes there is enough work with the respondent to employ a General Manager as it is the only scheme without a General Manager.

Respondents Case

In June 2008 (S.G.) became the new Chairman. At his first Board meeting he requested all relevant documentation to be brought to the next Board meeting.

As part of the Chairman's request for all documentation, he received the minute book from 2000 but discovered a number of pages missing. The pages missing pertained to the ownership of the land that was subject to the legal proceedings. During the investigation into the missing pages a grievance arose with the claimant in connection to the missing pages. Prior to this there were never any disciplinary issues with the claimant or his work.

At the time that S.G. became chairman due to the ongoing legal proceedings all works had ceased on the treatment plant, and the two-year funding for the General Managers salary was running out. When the respondent inquired about the funding they were told that it was available and would be paid quarterly. In August 2008 the respondent had not received the quarterly payment so the claimant's salary was paid out of the Water Scheme's membership fund until December 2008.

The respondent wrote to the claimant on the 21st of July instructing him to cease all activities. The e-mail sent by the secretary (C.S.) suggesting the claimant should "resign with honour" was not endorsed or authorised by the Board but sent by the secretary personally, he was later

reprimanded by the Board for sending the e-mail. The Board did not reply to the letters sent on behalf of the claimant or proceed with mediation, as they wanted to speak to the claimant personally.

The Chairman asked to meet the engineer on his own as they were going to be on the disputed land that was the subject of the legal proceedings. The Chairman had not organised to meet the claimant that is why he drove by him. The locks were changed on the reservoir gate, as the engineer needed access and a key could not be located, the original lock was broken and replaced with a new one.

The Chairman has written to Mayo County Council regarding the specifics of the funding for the General Manager position but has not received a response. The claimant's role has been taken over by the Treasurer (T.C.) and a member of the scheme.

The respondent had met with the Director of Water Services of Mayo County Council who informed them that the funding was only available for two years and it was the respondent's choice how to use it. The Treasurer (T.C.) was unhappy about paying the claimant's salary out of membership funds, so it was decided at a meeting where 11 members of the scheme attended to lay off the claimant.

The respondent decided to lay the claimant off due to lack of funds and work available for the claimant. The minutes of the Board meeting of the 10th of December note that the Board discussed the legal implications of putting the claimant on lay-off with their Solicitor.

The Secretary (J.M.) seconded the proposal to lay off the claimant as he wanted to prolong the 2 years funding and there was no work available at that time. The Secretary is not aware of any proposal to sack the claimant. J.M. was made aware of the disciplinary issue with the claimant from a person outside of the Board. It was decided to employ T.C. for a few hours to do the claimant's job as it was cheaper than employing the claimant.

Respondents Closing Submission

The Board is made up of lay people; their sole concern is for the members of the scheme and value for money. The Board only acted on the guidelines provided to them by the Department of Environment. They would consider the re-engagement of the claimant if the funding was guaranteed. The claimant was informed clearly that he was being laid off; there was no intent to sack the claimant.

Claimants Closing Submissions

The Board actively sought legal advice regarding the claimant's employment so the term 'lay-people' does not excuse their actions. The Board's own actions put their funding in jeopardy. The Board took the claimant's work away from him and transferred it to T.C. The disciplinary issue that arose happened 8 years ago before the claimant was an employee of the respondent. The Board never responded when mediation was offered or to any other queries the claimant had regarding his future with the respondent.

Determination

The Tribunal carefully considered all the evidence and the submissions of the parties representatives. The Tribunal felt sympathy for the respondent as a voluntary organisation in dealing with a difficult situation. The Chairman and the current Secretary who gave evidence before the Tribunal were elected as part of a new Board and did not have the benefit of guiding the respondent organisation from the start of a very large new venture.

The Respondent was made up of an amalgamation of four smaller group water schemes and took on a very big project to provide water for the benefit of the local community. The Board members acted on a voluntary unpaid basis.

Notwithstanding the foregoing the respondent was obliged to follow fair procedures and ensure compliance with statutory obligations in dealing with the claimant, who acted properly at all times. On the evidence heard there was no justification for disciplinary action against the claimant. There were mixed messages coming from the respondent with the previous secretary writing to the claimant and his solicitor apparently without the authority of the respondent (on the evidence presented). No steps were taken by the Board after the discovery of the correspondence to remedy the situation; instead the Board went ahead putting the claimant on lay-off having previously cancelled the work he was employed in. In doing so they were dismissing the claimant, while claiming they were merely laying him off.

The Tribunal finds that the claimant was dismissed and that the dismissal was unfair. Having determined the dismissal unfair the Tribunal determines the appropriate remedy is compensation and awards the claimant €9576.00.

In relation to the Minimum Notice claim the Tribunal note that notice was given to the claimant by way of letter dated 12th of December 2008. The Tribunal having determined the claimant was dismissed by way of this letter find that Minimum Notice was given by the respondent, and so the claim for minimum notice fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)