

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD814/2009, MN846/2009
WT356/2009,

against

EMPLOYER

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly B L

Members: Mr L. Tobin
Mr J. Flannery

heard this claim at Wicklow on 19th March 2010

Representation:

Claimant : Mr Edward Farrelly B L instructed by
Ralph McMahon, Solicitors, 130-132 The Capel Building, Mary's Abbey, Dublin 7

Respondent : Mr Conor Power B L instructed
Eugene F. Collins, Solicitors, Temple Chambers, 3 Burlington Road, Dublin 4

The determination of the Tribunal was as follows:

The appeal under the Organisation of Working Time Act, 1997 was withdrawn at the outset of this hearing.

Respondent's Case

The respondent who operated a retail jeweller's shop in Greystones, county Wicklow commenced trading in Ireland in November 2006. Its directors included two Turkish citizens who had gained experience and expertise in that trade. One of those directors told the Tribunal he was a jeweller by profession and was an expert in diamonds. A co-patriot who was acquainted with this witness assisted in setting up that shop. Since the respondent needed the ongoing services of that person the witness did not question or challenge in anyway the employment contract presented to him by that person. In that contract which was signed by both parties on 1 December 2006 the co-patriot described himself as an employee who would work one day a week with a net remuneration of five hundred euro. This two-year contract commenced on 19 December 2006.

Apart from these directors there were always two sales assistants employed at this outlet. Initially, trading and operating business went well but that situation changed as the respondent experienced a noticeable drop in turnover. In addition to moving premises to reduce their rental outlay the directors and staff were eventually subjected to a pay cut. Towards the expiry of the co-patriot's contract the witness spoke to him about the ongoing deteriorating financial situation. He told him that his contract would not be renewed on similar terms and that a decrease in pay was forthcoming. The claimant appeared to appreciate this. However, no new contract issued and the claimant continued to work on. By early 2009 the witness was fully aware that the respondent was unable to afford to pay the claimant his current rate. He told the Tribunal that he now realised that this rate was too high. That original payment continued on into 2009 because of "goodwill".

In early 2009 the claimant took both paid and unpaid leave from the respondent for approximately three weeks. According to the witness the claimant did not answer his phone when contacted by him upon his return. Around that time he also contacted another acquaintance who had some knowledge of the jewellery trade. The witness said he was not meeting up with that person in order to place him into the claimant's position. When the witness and claimant met in late February 2009 the former told the latter that the respondent could only pay him two hundred euro for his Saturday work. The claimant did not react then but a number of days later the witness received a call from him stating he no longer wanted to work for him. The witness added that the claimant then asked for up to six thousand euro in a redundancy payment. If that was not forthcoming then the claimant told the director "see you in court".

In July 2009 the respondent formally engaged the services of the other acquaintance on a much reduced rate than the claimant. That replacement was undertaking the same work and hours and was appointed to this position with the respondent following training and work practice sessions there.

Claimant's Case

Prior to and during the course of his employment with the respondent the claimant undertook work on a self-employed basis with at least one other jeweller. That employment only allowed him to work on Saturdays as a goldsmith for the respondent. His remuneration for that day's work far exceeded his daily rate as a self-employed person. The respondent made contact with him in September 2006 when the shop was opening. He wanted to obtain a contract of employment to give him security of employment. While he sourced the template for the contract elsewhere the claimant altered it to suit his needs.

The witness was always busy at work and felt his job was going well. He accepted that his initial contract expired on 18 December 2008 and was adamant that no discussions with the respondent occurred addressing the renewal of that contract prior to that expiry. The respondent made no response when he said he was returning to Turkey for three weeks in January 2009. Upon his return and at the end of his working day the witness was called into an office and told by a director that his pay was too high. A proposal to reduce it by sixty percent was discussed by the parties with the claimant offering to continue on for three hundred euro a day. No agreement was reached at that meeting and on exiting it the witness met a colleague who told him that someone was willing to do his work at a much lesser rate. He felt that the respondent was planning to replace him.

The claimant later told the respondent that he did not work for two hundred euro a day. He never returned to the respondent. The witness denied the respondent's assertion he sought a redundancy payment or that he threatened court action against them.

Determination

The Tribunal are satisfied based on the evidence adduced at the hearing that the Claimant was on a two-year fixed term contract which required him to work only one day a week, Saturday. That contract expired on the 18th December 2008. No discussions took place prior to the expiration of the contract as to its renewal. The Claimant after the Christmas rush went on his annual vacation for a period of three weeks. It wasn't until after the claimant returned from his annual leave that the discussion in relation to his contract was addressed. The Tribunal are satisfied that due to the fact the claimant only worked one day a week and that he went on annual leave in January that there was very little opportunity for the respondent to discuss his contract with him. The respondent explained to the claimant that they were in financial difficulties and that all staff would have to take a pay cut. The claimant was informed that his pay was going to be reduced from €500.00 to €200.00. Evidence was given that this pay cut was proffered not only because of the respondent's current financial situation but also due to the fact that having assessed the market in Ireland the respondent realised that the claimant was being overpaid for the services he was providing. The claimant did not accept this pay cut stating that he would not work for that amount. As a result his contract was not renewed. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also falls as the claimant is deemed to have resigned from his employment with the respondent.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

