

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD897/2009

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Dr A Courell BL

Members: Mr W O'Carroll
Mr T Gill

heard this claim at Loughrea on 23rd March 2010

Representation:

Claimant(s): Mr John Nash
Solicitor
Abbey Street, Loughrea, Co Galway

Respondent(s): Mr Alastair Purdy
Purdy Fitzgerald
Solicitors, Kiltartan House, Forster Street, Galway

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant commenced his employment as a butcher with the respondent company in 1997. He was initially based in Galway city, but later moved to a new branch in Athenry and was appointed manager. The employment was uneventful until November 2008 when the claimant discovered that the respondent was intending to sell the lease on the Athenry premises. The claimant asked the respondent if he would sell him the lease. He contended that the respondent said he would prefer to sell it to the claimant than to the third party he had intended to sell it to.

The claimant went to a bank to arrange a loan. The bank wanted the accounts for the previous two years and the respondent had only given him the previous year's accounts. The respondent made various excuses as to why he could not give him the accounts. On Saturday December 6th 2008,

the respondent came to the shop and said that the third party was taking over the following Monday.

The claimant did not attend work the following Monday. He later received a registered letter from the respondent stating that the deal had fallen through and seeking his return to work. The claimant returned to work.

In January 2009 he received a letter from the respondent which requested that he return to the Galway branch and stated that his working conditions would be unchanged. The claimant engaged a solicitor who corresponded with the respondent concerning what the claimant's conditions would be on his return to Galway. As there was already a manager in Galway the claimant was concerned that there was no position for him there. It was never confirmed to the claimant's satisfaction that there was a manager's position available for him in Galway.

On Saturday 21st February 2009 the respondent told the claimant that there was no job for him in Athenry the following Monday and that he was to go to Galway. The respondent asked for the keys back. The claimant stated that the respondent knew there was no job for him in Galway. It was agreed that he would go to the Athenry shop the following Monday.

When the claimant arrived on Monday 23rd February 2009 he found the third party buyer there and left. He did not contact the respondent again or reply to the respondent's correspondence. After the issue of the lease he did not trust the respondent anymore.

Respondent's Case:

The respondent gave evidence that he decided to sell the lease of the Athenry shop in November 2008, as it had not performed as well as he had hoped. He asked a few people, including the the third party who ultimately bought the shop, if they were interested in purchasing the lease. He did not ask the claimant. The claimant asked him about it in December 2008 and he provided some accounts, but was unable to give them all to him as they were not completed.

On 6th December 2008 he told the staff that the deal was nearly finalised and that the third party would be coming in the following Monday. He never said that they were being made redundant and he confirmed to the claimant that he still had his job with the same terms and conditions. The claimant did not come to work that Monday. There was an issue with the selling of the lease. The respondent asked the claimant to return, which he did. The claimant did not approach him about the lease after that.

The respondent wrote to the claimant in February 2009 to confirm that there was a managerial position for him in Galway. The manager there had agreed to step aside for the claimant. He went to Athenry to speak to the claimant about moving to the Galway shop, but he didn't want to. The respondent then told him to go the Athenry branch. He decided that the claimant could work there while the selling of the lease was resolved, but the claimant walked out on Monday morning. He wrote to the claimant to tell him that his job was still available, but he got no response.

During cross-examination he stated that he had not told the claimant that he had spoken to the Galway manager and that he was going to stand aside for him. Most communications were through letters to the claimant's solicitor. There were five staff members in the Galway branch including the manager.

The sale of the Athery branch was not completed until August 2009. The other two staff in the Athery branch were kept on by the new owner. However, in February the third party was pressurising the respondent for work and so he had let him work for him. He had not explained this to the claimant or told him that the third party was coming in on Monday 23rd February 2009 to work there. He had told the claimant that he would open the shop that morning, but he could not make it so he asked the third party to open up.

Determination:

It was the claimant's contention that he was constructively dismissed. While the bar is high to prove such a claim, and the burden is on the claimant, the Tribunal finds that he has reached the required level. It was reasonable that the claimant considered his employment to have been terminated when he arrived at the shop on February 23rd 2009 and found the third party there with no prior warning of such from the respondent. Taking all matters into account, including the lack of mitigation by the claimant and his contribution to the dismissal, the Tribunal awards the claimant €13,760.00 (thirteen thousand, seven hundred and sixty euro) under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)