

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE –**claimant**
against

UD746/2009
MN765/2009

EMPLOYER –**respondent**

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: Ms. K.T. O’Mahony B.L.

Members: Ms. M. Sweeney
Ms. H. Kelleher

heard these claims at Cork on 18 February
and 20&21 April 2010

Representation:

Claimant: In person

Respondent: Mr. Eoin Clifford B.L. instructed by
Ms. Eileen Hayes, P.J. O’Driscolls Solicitors,
41 South Main Street, Bandon, Co. Cork

The determination of the Tribunal was as follows:

At the relevant times in this case the respondent operated two motor vehicle dealerships and two supermarkets, one on each side of Bandon. There are associated companies, in the same group, spread throughout Munster, though mainly in the Cork area. The claimant was employed from September 1978 in general administration and the employment was uneventful until November 2006 when the claimant was offered and accepted the position of Sales Administrator replacing the previous incumbent who had left.

The claimant’s position was that this job was foisted on him. The respondent, while accepting that the claimant did not seek the job, makes the point that the claimant willingly took the job on and never raised any objection.

The principal aspects of the claimant's duties involved the registering and the buying of cars. The respondent's position was that some 95% of the claimant's time was involved with these activities. The claimant's position was that much more of his time was involved in other duties.

Following a performance review meeting between the claimant, the Group Director (GD) and the Financial Controller (FC) on 15 February 2008 the respondent became concerned that the claimant was doing unauthorized overtime and then taking time off in lieu. FC then conducted an analysis of the claimant's work to assist in their understanding of his workload. The claimant viewed this as a time and motion study carried out by someone with no expertise in that area.

GD set out the respondent's concerns in a letter to the claimant on 27 June 2008 and sought the claimant's response. This was provided in a detailed response from the claimant dated 4 July 2008. In his reply the claimant also raised the issue of his dissatisfaction with the method used to calculate his remuneration with respect to the change from weekly to monthly payment. The respondent's position was that they were happy enough with the claimant's response and other priorities became the focus of their attention so there was no need to take further action in regard to these concerns. The respondent accepted that it would have been better had they replied to the claimant's detailed letter of 4 July 2008.

2007 had been a very profitable year for the respondent. However, the economic downturn hit the respondent in or around May 2008 resulting in considerable reductions in both new and second-hand car sales. When the respondent indicated its desire to have both brands at one of its Bandon sites one of the manufacturers insisted on being relocated to one of the Cork outlets. These factors had a serious effect on the profitability of the respondent and forced it to adopt cost-cutting measures.

Following a review of accounts to the end of October 2008, GD and FC met on 28 November 2008 to consider cost cutting measures including redundancies. Similar measures had already been adopted in other companies within the group. Of the two sales executives who had been working with the relocated brand, one was to be declared redundant and the other had relocated to Cork with the brand. The number of sales executive positions for the other brand was to be reduced from three to two, with effect after quarter one of 2009. There was then a consideration of the position of Sales Administrator, held by the claimant, and that of Business Manager (BM), who had commenced employment with the respondent in October 2006. Because of the very serious downturn in car sales it was no longer feasible to continue both positions on a full-time basis. A decision was made to combine the two positions and a selection had to be made between the claimant and BM as the candidate for redundancy.

Selling finance and financial products to customers had become an integral part of the respondent's business and constituted a major part of BM's duties within the respondent. From 1 January 2007 Minimum Competency Requirements (the requirements) for the selling of the financial products came into effect. The respondent was required to be a Registered Credit Intermediary (RCI). There are three ways for an individual to meet the standard set by the requirements:

- obtain a recognised qualification, or
- if having sold finance or financial products for four years in the previous eight years to 1 January 2007 there was no requirement to obtain a recognised qualification if "grandfathered" by their employer and engaged in ongoing continuing professional development (CPD).

- A transitional arrangement, whereby a person in the industry on January 2007 but not having sufficient experience to avail of the grandfathering arrangements could continue in the industry provided s/he was working towards and obtained a relevant qualification by 1 January 2011.

BM had extensive experience in the motor trade and met the criteria for grandfathering. The claimant, despite his long service, had neither the qualification nor the required experience to meet the criteria for grandfathering. To bring the claimant within the requirements would necessitate keeping on BM for up to a year to supervise him, which would be a costly option.

Based on the criteria set out in the requirements the claimant was selected as the candidate for redundancy as it was felt that BM would have no problem fulfilling the principal aspects of the sales administration role. GD and FC decided to consider whether there were any other roles in the respondent and across the group, which might be suitable for the claimant.

GD and FC met again on 5 December 2008 having considered the possibility of the claimant taking on a role in another part of the group and concluded that, as redundancies were being implemented across their other outlets in the group, there was no alternative position for the claimant and it was confirmed that he was to be informed later that day of his redundancy with two months' notice.

GD met the claimant later that day and informed him that his position was being made redundant. The respondent's position is that GD gave the claimant over two months' notice of redundancy on 5 December 2008. The claimant's position is that GD told him that his position "was going to be made redundant" and that he would be entitled to two months' notice. Nothing was put in writing at this stage. The claimant consulted a solicitor and from that point on his attitude was: "Say nothing until you hear more". The number of staff in the group has been reduced from 120 to 74 and in the respondent from 32 to 21.

On or about 10 December 2008 the claimant asked GD about the progress of the overtime investigation and GD told him that there was no point in going further with it. Things had got very busy and it had slipped down the priority list. The claimant's position was that his selection for redundancy was based on his problems arising in regard to overtime, his complaint about changing from weekly to monthly pay, his level of pay compared to BM who was on a lower level of pay and his seniority within both the respondent and the group. The claimant further asserted that the redundancy was not genuine as the work for which he was employed continued after his employment ended.

On 6 February 2009 GD met the claimant and gave him two weeks' written notice that he was being made redundant as of 20 February 2009. The claimant sought a reference from the respondent and this was provided on 12 February 2008. The claimant took up the respondent's offer to take time off to look for other employment and his last day at work was 13 February 2009.

Determination

Section 7 (2) (b) of the Redundancy Payments Acts, 1967 to 2007 provides

"For the purposes of subsection (1), an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to—

the fact that his employer has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employee had been employed (or had been doing before his dismissal) to be done by other employees or otherwise, or”

It was common case that there was a serious downturn in car sales in the respondent in 2008. The Tribunal is satisfied that a genuine redundancy situation existed in that the respondent decided to carry on the business with fewer employees and combined the positions of business manager and sales administrator. The Tribunal is further satisfied that given the necessity for the respondent to comply with the requirements set by the Financial Regulator and the fact that the Business Manager (BM) met the criteria for those requirements while the claimant did not, his selection for redundancy was fair and reasonable. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

The Tribunal is satisfied that, at the meeting on 5 December 2008, GD gave the claimant over two months’ notice of the termination of his employment by reason of redundancy. Section 4 of the Minimum Notice and Terms of Employment Acts, 1973 to 2005 requires that a certain period of notice be given depending on the length of service. There is no requirement under the Act that the notice be in writing or that the date of termination be specified. By the date of termination on 20 February 2009 the claimant had received in excess of his statutory entitlement to notice. Accordingly, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)