

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE - *appellant*

CASE NOS.
UD1216/2009
WT537/2009

against

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. R. Maguire B.L.

Members: Mr. C. McHugh
Ms. M. Mulcahy

heard this claim at Dublin on 26th April 2010

Representation:

Claimant: Mr. Conor Bowman B L, instructed by Mr. Stan Murphy of Murphys Solicitors, Mount Clarence House, 91 Upper George's Street, Dun Laoghaire, Co. Dublin

Respondent: Mr. Michael McNamee B L, instructed by Mr. Michael McInerney of McInerney Solicitors, 283A Harold's Cross Road, Dublin 6W

The determination of the Tribunal was as follows:-

The claim under the Organisation of Working Time Act, 1997 was withdrawn.

Respondent's Case

The general manager gave evidence. He is the general manager of the restaurant. He is the decision maker and looks after the day to day running of the business. The claimant was the floor manager and he looked after the front of house, meeting and greeting customers.

During the second half of 2008 business decreased by about 30%. Costs had to be cut. A redundancy was needed because none of the other options would make sufficient difference. The claimant was chosen because he, the general manager, could absorb that work and also because the floor manager was being paid more than the other members of staff.

The general manager had a number of informal chats with the floor manager when he mentioned the falling trade and the need for some action. He also asked the floor manager about his own plans for the future because he wanted to know if the floor manager was planning to retire. The floor manager did not give any indication of his plans.

On 2nd December 2008 the general manager met with the claimant before service of dinner and informed him that he would be made redundant. He gave the claimant a letter outlining his statutory redundancy entitlement. The claimant accepted his redundancy payment. The claimant was the only employee made redundant. The general manager had no recollection of the claimant requesting a meeting with him in March 09.

Claimant's Case

The claimant gave evidence. He had worked for the respondent for about 17 years. The general manager met him in the restaurant and made him redundant. No alternatives were discussed. He was not asked to consider a wage cut or a cut in hours.

The general manager did not say the claimant was too old. The claimant could work now. He is in receipt of the old age pension. After his employment ceased he asked the general manager for a meeting but the general manager refused to see him. The claimant was upset by the general manager's refusal to meet him.

The claimant's wife gave evidence. The claimant sought a meeting with the respondent a week after he was let go. He had not been given a copy of the forms he signed. He did not get legal advice because he did not have a copy of the form or of the letter from the respondent.

Determination

The Tribunal carefully considered the evidence adduced. The Tribunal accepts the evidence of the respondent that there was a significant down turn in business. As a result action to reduce costs became imperative. The respondent could have consulted more extensively with the claimant in a search for alternative courses of action. However the Tribunal are satisfied that a redundancy situation existed. The selection of the claimant on the basis that he was the highest paid employee is considered to be fair. The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)