

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
MN1211/2009
UD1208/2009

- Claimant

against
EMPLOYER
EMPLOYER

- Respondent
- Respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms C. Egan B.L.

Members: Mr. W. O'Carroll
Ms H. Murphy

heard this claim at Loughrea on 16th April 2010

Representation:

Claimant(s) : Mr Cathy McDarby, Michael McDarby & Co, Solicitors, Glebe Street, Ballinrobe,
Co. Mayo

Respondent(s) : In Person

The determination of the Tribunal was as follows:-

A preliminary issue was raised concerned the 3 month delay in the submitting of the claimant's T1A form to the Employment Appeals Tribunal. Having heard submissions from both parties in this case the Tribunal finds that exceptional circumstances did exist and therefore they proceed to hear the evidence in this case.

Claimant's Case:

The claimant gave evidence. He was employed by the respondent as a Manager of a fitness centre. He originally commenced as a part-time fitness instructor. He worked a 39-hour week on either a 7 a.m. to 3 p.m. shift or 3 p.m. to 10 p.m. shift.

In January 2008 he placed an advertisement in a local newspaper to promote the respondent's business. Later that year a colleague of his (hereafter known as F) wrote to the respondent saying

the claimant was bullying her. He met with F to discuss the matter and they seemed to sort it out. However she decided to leave the respondent's employment.

He explained he had a problem getting funding from the respondent to pay for supplies and was constantly harassed by suppliers to be paid. It became apparent that the advertisement he had placed earlier in the year had not been paid for. Staff were also not being paid on time. He spoke to Human Resources (hereafter known as HR). He told her his concerns and said that he was considering leaving his employment. The owner of the respondent company contacted him on September 1st 2008 asking him to meet him the following day.

On September 2nd 2008 at 11 a.m. he met the owner in a café near the fitness centre. He told the claimant he had good news "F had left so you're staying". He told the owner he had spoken to F and they had worked out their difficulties. He also told him that bills and staff were not being paid and he was being harassed daily by suppliers to be paid. He also told the owner that he could not run a business properly. The owner was very annoyed, threw his food in the claimant's lap and stormed out. The claimant was rostered to work at 3 p.m. and attended the centre. He went to the office where the owner was present. The owner told him to get out and was not even allowed to collect his belongings. He later received his P45 by post.

On cross-examination he stated he had given the owner a list of projections for the business. He had asked for a contract of employment and not received one. He refuted he had sent insulting texts to staff, only texts concerning work. He stated that it was because of the owner that F had left. He refuted he had resigned and met the owner on the day in question as he was his employer and he wanted to discuss the problems in the centre.

When asked he stated that he ran the business day-to-day and could order stock but was not in charge of finances.

Respondent's Case:

The owner of the business gave evidence. On September 1st 2008 F informed her she was resigning because of difficulties she had with the claimant. He contacted HR to inform them and was told the claimant was leaving too. He contacted the claimant to meet the following day to discuss the situation.

On September 2nd 2008 he met the claimant and informed him F had left so he could stay on. The claimant talked of no money to pay suppliers, proceeded to insult his business prowess and stated he did not want to work for him anymore. He left the premises.

On cross-examination he stated that during his telephone conversation on September 1st 2008 he had asked the claimant to remain working for him and had no problem with his performance. However this changed the following day when he was highly insulted. The claimant turned up for work after the incident in the café which surprised him as he had resigned. He stated the only reason he met with the claimant in the café was to ask him to remain working for him. He refuted the claimant had given him any business projections.

Determination:

Having heard the sworn evidence of both parties the Tribunal finds that on the balance of probabilities the Tribunal would be in favour of the claimant but finds there was a significant contribution on behalf of the claimant.

Section 7 (1) of the Unfair Dismissals Act, 1977 states:

- (1) “Where an employee is dismissed and the dismissal is an unfair dismissal, the employee shall be entitled to redress consisting of whichever of the following the Rights Commissioner, the Tribunal or the Circuit Court, as the case may be, considers appropriate having regard to all the circumstances:
 - (a) re-instatement by the employer of the employee in the position which he held immediately before his dismissal on the terms and conditions on which he was employed immediately before his dismissal together with a term that the re-instatement shall be deemed to have commenced on the day of the dismissal, or
 - (b) re-engagement by the employer of the employee either in the position which he held immediately before his dismissal or in a different position which would be reasonably suitable for him on such terms and conditions as are reasonable having regard to all the circumstances, or
 - (a) payment by the employer to the employee of such compensation (not exceeding in amount 104 weeks remuneration in respect of the employment from which he was dismissed calculated in accordance with regulations under section 17 of this Act) in respect of financial loss incurred by him and attributable to the dismissal as is just and equitable having regard to all the circumstances.

This Section was amended in the Unfair Dismissals Act, 1993 and it states:

“Section 7 of the Principal Act is hereby amended by –

- (a) in subsection (1) the substitution of the following for paragraph (c):
 - (c) (i) if the employee incurred any financial loss attributable to the dismissal, payment to him by the employer of such compensation in respect of the loss (not exceeding in amount 104 weeks remuneration in respect of the employment from which he was dismissed calculated in accordance with regulations under section 17 of this Act) as is just and equitable having regard to all the circumstances, or
 - (ii) if the employee incurred no such financial loss, payment to the employee by the employer of such compensation (if any, but not exceeding in amount 4 weeks remuneration in respect of the employment from which he was dismissed calculated as aforesaid) as is just and equitable having regard to all the circumstances”

Accordingly the Tribunal awards the sum of € 2,340.00 (this being 4 weeks gross wages) under the

Unfair Dismissals Acts, 1977 to 2007.

The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 fails, as there was no evidence of loss adduced.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)