

EMPLOYMENT APPEALS TRIBUNAL

Claim of:

Case No.

EMPLOYEE –Claimant

UD1777/2009

against

EMPLOYER -Respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Browne
Mr F. Dorgan

heard this claim at Wexford on 30th November 2010

Representation:

Claimant: Ald. Padge Reck, Wexford County Council, Sunrise,
Mulgannon, Wexford

Respondent: Ms. Cliona Kenny, Ernest J Cantillon & Co, Solicitors,
39 South Mall, Cork

Preliminary Issue:

The respondent raised as a preliminary issue the fact that the claim of the claimant was not made within the six-month limitation period as laid down by the Unfair Dismissals Acts, 1997 to 2007. The Tribunal heard submissions from both parties on the issue of delay. The Tribunal noted that the claim was lodged on 11th August 2009. The Tribunal noted the short period of delay. The Tribunal also noted that the claim was dated 27th July 2009. The Tribunal determined that the claimant had formed the intention to appeal within the limitation period and the reason for the delay was that the claimant only became aware that he may have a claim in the two weeks prior to the expiration of the six-month limitation period and due to ignorance of the law failed to make the claim within the limitation period. The Tribunal noted that the claimant did not have the benefit of legal advice at that time. As the claimant did not have legal representation at the hearing the Tribunal felt the interests of justice would best be served if the substantive case was to be heard as it was possible that the evidence of the claimant might expand upon the issue of delay and the Tribunal did not wish to deny the claimant this opportunity.

The General Manager gave evidence that the respondent company has a garage premises in both Wexford and Gorey. The claimant commenced employment as a full-time car valet in the Wexford branch on 28th September 2005.

From July 2008 the respondent's business began to suffer due to the recession and a change in legislation relating to the car taxation. From this time the profitability of the company decreased sharply and this was discussed at monthly management meetings. The General Manager stated that he had a responsibility to take the threat to the business seriously. The number of new cars sold for 2009 was greatly reduced from previous years. Figures in relation to this issue were opened to the Tribunal. The General Manager realised he had to consider rationalisation measures.

As part of the rationalisation exercise he examined the varying departments of the respondent company to see where savings could be made to the cost-base. Although the sales department had the greatest decrease in revenue the company was relying heavily on the skills of the sales people to keep the business moving forward. He also considered the fact that the sales personnel were employed on a basic wage plus commission. Repairs and services were vital to the company during 2008 and 2009. The work, which the mechanics did, supported the respondent's business through these difficult months.

The claimant's position of full-time valet was selected for redundancy and his employment terminated on 6th February 2009. The General Manager did not consider re-locating the claimant to other areas of the business, as there were no other positions available. Other staff were placed on short time. There were no further redundancies during 2009. However, a valet in the Gorey branch, an administrative employee in Gorey and an administrative employee in Wexford have since been made redundant.

The claimant's position was not replaced. The Head General Operative who was employed before the claimant and who had assisted with valeting duties when required during the claimant's employment, continued to perform some valeting duties as well as his normal duties.

Part of the respondent's business is a forecourt and shop. The staff for the forecourt are interviewed and employed by the Shop Manager. However, it is stated in the forecourt personnel's terms and conditions that they may be asked to work in the garage at peak times. The General Manager can therefore call on them to perform valeting or other duties at peak times.

During cross-examination it was put to the General Manager that a non-national (Employee M) with shorter service than the claimant had carried out the claimant's duties after he was made redundant. The General Manager replied that Employee M was interviewed and employed by the Shop Manager for the forecourt and shop. However, like all other forecourt personnel it stated in Employee M's terms and conditions that from time-to-time he could be asked to assist with duties in the garage including valeting. The claimant was different in this respect in that he had not trained in other roles and all of his duties relating to valeting vehicles.

The Shop Manager gave evidence that she recruits the staff for the forecourt and shop only. She interviewed and employed Employee M during November 2007 and he continues to be employed by the respondent. His duties are that of a forecourt attendant but as stated in his terms and conditions he can be asked to assist in the garage at peak times. This is similar to the terms and conditions of all other forecourt personnel.

The claimant gave evidence that he was employed from 2005, some two years prior to Employee M. The claimant disputed that Employee M had worked on the forecourt. The claimant stated that both he and the Head General Operative gave Employee M ongoing training in valeting.

When the General Manager informed the claimant in January 2009 that his role was to be made redundant, the claimant had enquired if he could be re-deployed to another area of the business. The General Manager informed the claimant that due to rationalisation his position had to be made redundant and that the Head General Operative would carry out the claimant's duties from the time he was made redundant. The claimant subsequently received a redundancy payment.

However, some months later and in the weeks prior to 11th August 2009 the claimant was at the forecourt and observed that Employee M was working there. The claimant later made enquiries and was informed that Employee M carried out valeting duties, which the claimant had done. The source of this information was not present at the hearing to give evidence on behalf of the claimant. The claimant later met Employee M who told him he was still valeting cars and that his work was quite busy. After hearing this, the claimant submitted his form T1A to the Tribunal some weeks later. Employee M was not present at the hearing.

During cross-examination the claimant stated that he had not submitted his form immediately to the Tribunal, as he was unaware of the procedures to be followed. The claimant accepted that there was a reduction in new car sales but he believed there was enough valeting work for a full-time valeter. The claimant accepted that other employees who now perform car valeting do so along with their other duties but stated that they had always performed other duties.

Determination:

The Tribunal having carefully considered the evidence adduced at the hearing finds that a genuine redundancy situation existed in relation to the claimant's employment as a result of a downturn in the motor business section of the respondent's company. The Tribunal does not find that the claimant was unfairly selected for redundancy but that the selection criterion used was on the basis of skills required by the respondent in order for the respondent company to survive. The Tribunal dismisses the claim under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)