

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE
-claimant
against

UD1593/2009

CASE NO.

EMPLOYER

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Herlihy

Members: Mr T. Gill

Mr F. Dorgan

heard this claim at Ennis on 24th June 2010

Representation:

Claimant: Mr. Niall Casey solicitor John Casey & Company, Solicitors,
Bindon House, Bindon Street, Ennis, Co. Clare

Respondent: Kerin, Hickman & O'Donnell, Solicitors,
2 Bindon Street, Ennis, Co. Clare

Background:

The respondent company is a local butcher. The claimant worked for the respondent as a butcher. The claimant contends that he was unfairly dismissed under the guise of redundancy.

Respondent's case:

The Tribunal heard evidence from the accountant / auditor for the respondent company who gave evidence as to the economic situation with the respondent. He explained that they had to make cutbacks.

The Tribunal heard evidence from the owner of the respondent. The owner described how he came to employ the claimant. His butcher left and he let his suppliers know that he was looking for a butcher. The claimant spoke to him and said that he would be interested in the position. Another woman who worked there full time got married and said that she was going to start a family so he applied for an apprentice.

He explained that business was getting tough and profits were dropping. He spoke to his accountant. They looked at new suppliers to reduce costs. They let staff go. In January 2009 he had to make the claimant's position redundant. He himself would go back to work in the butchers on a full time basis. He then employed another person whose knowledge of butchery was limited so he took that person on a six-month trial and then put him on a part time basis.

Cross-examination:

It was put to the owner that he told the claimant that he was being let-go with immediate effect and he agreed this was so. He did not agree that he told the claimant that he was not entitled to anything. It was put to him that after the claimant was let go he saw an advertisement in FÁS for an apprentice butcher, the witness explained that his wife put an advert into FÁS for an apprentice butcher and that he was looking for an apprentice butcher with two years experience. He did take on an apprentice to cover for the woman going on maternity leave.

The Tribunal heard evidence from the owner's wife. She explained that she asked the person in FÁS about placing an advert. She explained that she wanted an apprentice butcher. The woman in FÁS told her to place a broader advert, that is to put down butcher full time / part time.

In cross-examination she explained that they had not set out to look for a butcher; they never had the intention to take on a full time butcher. It was put to her that the advert was placed in FÁS two weeks and two days after the claimant was let go. She replied that the claimant was let go because of the downturn

Claimant's case:

The claimant gave evidence to the Tribunal. He explained that he was an apprentice with the father of the owner of the respondent.

The owner's wife phoned him and asked him if he would be interested in a full time position. He agreed the pay with the owner of the respondent and he commenced working for the respondent.

On 30th January 2009 the owner told him that he was letting him go with immediate effect. He was flabbergasted. There was a lull in business after Christmas but he thought that business was fine. He asked the owner if there was a problem (with him / his work) and the owner told him that there was not. He told the owner that he was due notice and the owner told him to call back in a few days to discuss the matter. He called back a few days later and said to the owner that he would be willing to cut his work days to two and the owner declined the proposal. He asked about his notice and the owner said he would discuss it with the accountant. He called back a few more days later and the owner said he did not owe him anything.

He logged onto the FÁS website and noticed a job advertised for a full time butcher. He enquired from FÁS what the job was and the person in FÁS told him that he would be applying for his old job back.

Determination:

The Tribunal unanimously determine that the claimant was unfairly dismissed. The claimant's position was not redundant at the time. The Tribunal also determines that compensation be the most appropriate remedy. Accordingly, the Tribunal awards the claimant the sum of €15,000.00, under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

