

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**

EMPLOYEE

- claimant

**CASE NO.**

RP2373/09

UD2113/09

**against**

EMPLOYER

- respondent

**under**

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr C. Lucey  
Mr P. Trehy

heard this claim at Dublin on 6th December 2010 and 11th April 2011.

**Representation:**

Claimant: Ms Catherine McLoone BL., instructed by Mr. Declan Duddy, Allen & Associates,  
Solicitors, 10 Mountkennedy Town Centre, Newtownmountkennedy, Co. Wicklow

Respondent: Mr. Niall Beirne BL., instructed by Mr. Richard Lovegrove, Joynt & Crawford,  
Solicitors, 8 Anglesea Street, Dublin 2

The determination of the Tribunal was as follows:-

**Respondent's Case:**

The respondent is a yacht club. Due to the downturn in the economy in 2008/2009 membership decreased significantly which impacted on the club. There was a 25% reduction in catering needs. Demand for fine dining had disappeared. The club's captain prepared a presentation of the club's concerns and met with all employees. A request was made of staff to accept a 5% reduction in salaries up to €25,000 and by a 10% reduction in wages/salaries over €25,000. It was explained that in the interest of fairness these reductions had to be applied universally and agreement of all staff was necessary before implementation of the cuts. Four staff members expressed disagreement to the proposed pay cuts and as a result the pay cuts were not implemented.

Other avenues had to be pursued in an effort to reduce costs.

Because of the respondent's rapidly deteriorating financial circumstances an independent consultant was asked to look at the operations of the Club and review the major costs. The club's core

activities are sailing and catering. The claimant worked as a sous chef. The consultant recommended a restructuring of the sailing facility with one redundancy and that two employees, namely the executive chef and the sous chef be made redundant in the catering area. A decision was made in May 2009 to reduce staff numbers. A resignation subsequently occurred in the sailing area thus avoiding the need for a redundancy. The new structure in the catering area encompassed a kitchen supervisor/junior chef to replace the existing two chefs. The executive chef accepted his redundancy payment. Pre prepared food replaced the need for the chefs.

The consultant presented his recommendation to the club's officers.

The consultant attended a meeting with the General Manager (PF) and the claimant on 5<sup>th</sup> May 2009. The claimant was informed that his position was being made redundant. He was unhappy and did not see it as a redundancy but as being fired

Following that meeting PF prepared a letter to the claimant and handed it to him. PF expressed his regret that it had been necessary to take the decision to terminate the claimant's employment. He proposed giving the claimant formal notice of his redundancy two days later, 7<sup>th</sup> May 2009 and that he was entitled to eight weeks notice. The claimant was not required to work out his notice. The Club was willing to pay the claimant an ex gratia amount of €5000 in recognition of his long service and on condition that the claimant agreed that this would be in full and final settlement of all claims against the Club.

The Club was prepared to discuss a continuing arrangement with the claimant through a franchise agreement following the termination of his employment and whereby he could provide catering services to the Club.

Following receipt of the letter of 7<sup>th</sup> May 2009 the claimant took legal advice. His solicitor wrote to the respondent asking that no action should be taken for a period of seven days. The following day, 8<sup>th</sup> May 2009 PF wrote to the claimant enclosing cheques in respect of his payment in lieu of notice and wages and holidays owed to him. An additional cheque in respect of his redundancy was at his disposal and would be given to the claimant subject to his signing the RP50 form. The claimant's P45 was also enclosed. The claimant rejected the offer of an ex-gratia payment of €5000.

The claimant's legal advisor wrote to PF indicating that the claimant felt that the purported redundancy package fell far below his legal entitlement given his tenure.

By letter of 21<sup>st</sup> May 2009 PF furnished the claimant with his RP50 and asked if the redundancy figure was not correct to let the Club know. PF also enquired what increased ex gratia amount the claimant was seeking.

On 18<sup>th</sup> September 2009 PF furnished the claimant with his redundancy cheque and asked that he sign the RP50 form and return same to the Club. The claimant did not cash his redundancy cheque.

Following the claimant's redundancy the Committee engaged a third party supplier to supply pre-prepared food. Agency staff were hired to assist in special functions and worked from four to six hours whenever required.

The same level of food was not provided in the Club. After some time the cost of the pre-prepared food became excessive and the club negotiated with an agency and took on a kitchen supervisor.

Food is now bought in and cooked by the cooks in the Club.

**Claimant's Case:**

The claimant commenced working as a Sous Chef for the respondent in 1999. He enjoyed his work and worked in different areas throughout the club, such as the Bar, the Bistro and the restaurant. He prepared and cooked food for functions throughout the year.

When the claimant became aware that the Club was in financial difficulties he was prepared to take a pay cut and remain working for the respondent.

He approached PF with a view to setting up a franchise. He had already discussed a loan with his Bank. He had three different proposals. When he was notified of his redundancy he asked PF if he had spoken to the Club's committee about the franchise but he had not. He felt he was no longer wanted on the premises.

The claimant believed the report prepared by the consultant was flawed. The same functions remained in the catering area and the same quality of food was prepared and cooked. He contended that the quality of the food served in the Club following the termination of his employment had not changed from the time he had worked there.

The claimant believed if he signed the necessary paperwork the franchise would be nil and void. He contended that he was unfairly dismissed.

The claimant has secured some work since the termination of his employment.

**Determination:**

The Tribunal carefully considered the evidence adduced at this two-day hearing. The general economic downturn and the reduction in members and income into the Club were put forward as the reasons for the necessity for redundancies in the Club. The respondent appears to have carried out a detailed examination of what was required with regard to staffing levels. While it is the case that the provision of food was still required by the Club there was a fundamental change in the nature of what was required vis-à-vis price and quality.

The Tribunal finds that the claimant was not unfairly selected for redundancy and his claim under the Unfair Dismissals Acts, 1977 to 2007 fails. His claim under the Redundancy Payments Acts, 1967 to 2007 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)