

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD2488/09

- claimant

against

EMPLOYER

- respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms O. Madden B.L.

Members: Mr. R. Prole
Mr M. O'Reilly

heard this claim at Naas on 22nd March 2011 and 16th June 2011.

Representation:

Claimant: Mr. Fintan Hurley BL, instructed by Mr. David Powderly, David Powderly, Solicitors, The Square, Kilcock, Co. Kildare

Respondent: Ms Mary Paula Guinness BL instructed by Ms. Christian Carroll, Orpen Franks, Solicitors, 28 & 30 Burlington Road, Dublin 4

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant commenced working as a yard hand in August 1988. He remained in that role until 1995 when he commenced a new role transporting horses to various places. He was a trusted employee. Sometimes he encountered friction with the Assistant Racing Manager (Mr. F), his boss. His hours of work were from 8.00 am to 4.30 pm. In his job staff referred to him as 'sailor'.

In 2000 the claimant became aware of thefts of foodstuffs from the yard. Mr. F. and others were also aware of this. The claimant became very annoyed. He contended that Mr. F should have done something about the thefts and flagged it with the Stud Manager, Mr. C. He then handed in his notice. He suddenly realised he had made a mistake to lose such a good job and asked Mr. F. if he could have his job back. He was offered his job back even though he was satisfied he had another job lined up elsewhere.

Mr. C had a celebratory birthday party in August 2007 and the claimant and his wife attended. The

claimant became extremely upset, humiliated and distressed when during the celebrations Mr. C. looked down at him and said "There's sailor, and to think his wife was going to leave him but we gave him his job back". The claimant and his wife quickly left the party and he had to visit the respondent's GP the next day and was deemed unfit for work. Soon after Mr. C. apologised to the claimant and his wife for his inappropriate remarks at his birthday party and also circulated a memo to all staff to that effect several days later.

Mr. C wanted the claimant to return to work and he did so. As Mr. F. was absent from work due to a back injury and would be for several months, Mr. C. asked the claimant to take over some of Mr. F's duties. The claimant was aware that this was not going to be on a permanent basis. The claimant contended that he did not assume the entire duties previously carried out by Mr. F. When Mr. F. had been absent from work on previous occasions, the claimant carried out his duties and was in charge of the yard. Five employees from the stud reported to him. The claimant enjoyed being in charge and liked doing things the right way.

Mr. C complimented the claimant in his new role. Before Mr. F returned to work from sick leave, Mr. C. told the claimant that he would still have responsibility for the day-to-day running of the yard.

When Mr. F. came back both he and the claimant were at loggerheads. Mr. C. met them both and told Mr. F. that the claimant was still in charge of the day to day running of the stud. Mr. F was to attend the races and work in the nearby stud by arrangement with the owner.

The claimant contended that Mr. F. wanted his role back and he told him that he had messed up everything in the yard. The claimant wanted the stud to run properly. Certain members of staff would turn up late and the claimant would get very upset by this. There was a lot of friction between him and Mr. F. The claimant felt down in himself. He attended to other jobs in the stud. It had got to a stage when he was sick of the friction and wasn't able to fight any more. Mr. F. told him to return to his old duties and Mr. C. wanted him looking after the day to day running of the yard. Three men had been left looking after the horses and the claimant contended that he should have been left looking after the horses. He was most annoyed and decided to go down and cut the grass.

The claimant contended that on many occasions Mr. C. knew exactly what was going on. The claimant was given a job to do by Mr. C. Mr. C knew things were not going according to plan and Mr. C should have come and spoken to him.

In July 2008 the claimant's wife had gone to America for a short holiday with their son and he had to look after their other son. Mr. F. ordered him to take horses to the Newmarket sales. He was forced to go to the sales and he should have been at home minding his son. He was very upset while there and when he returned he contacted the Stud's doctor who told him he needed more specialised help and suggested he go to hospital but the claimant refused to go, as he had to look after his son at home.

When Mr. C. heard about the claimant's breakdown he went to his house to visit him and discuss what needed to be done to help him. Mr. C told him to get the best treatment and not to worry about the costs. Mr. C. said his job was there for him and not to worry about anything and that he would be looked after.

The claimant and his wife had a second meeting with Mr. C and Mr. C. reassured the claimant that

he was still in charge of the day to day running of the stud and that Mr. F. had been informed accordingly. The claimant asked Mr. C. to clarify the position and put it in writing. By letter dated 22nd October 2008 Mr. C asked the claimant to return to work under certain conditions, namely, that he would be responsible for the day-to-day running of the racing section of the stud, that Mr. C had discussed this with Mr. F and he was in full agreement and finally Mr. F. was retaining his existing position albeit now on a consultancy basis and Mr. F. agreed not to interfere with the day to day running of the yard. Mr. F was formally retiring towards the end of October 2008.

The claimant was unhappy that Mr. F was retaining his existing position albeit on a consultancy basis. It appeared to the claimant that both he and Mr. F. were overlapping. He wanted clarification on what his position was. He felt it would not work when Mr. F. was there also.

The claimant replied to Mr. C's letter with his concerns. He outlined that he was undermined and subjected to constant harassment and bullying. As a result he suffered from severe health problems. He felt Mr. C.'s letter set out vague and unacceptable terms on which he was to return to work. He wanted his legitimate complaints dealt with.

By letter dated 8th December 2008 Mr. C wrote to the claimant saying 'without prejudice we take on board your comments and will be in contact with you regarding same in due course'.

The claimant received a letter from Mr C. early in January 2009 indicating that they were exploring the possibility of a mediated solution to the outstanding issues. He proposed that an independent mediator be asked to assist the parties in resolving matters to the mutual benefit of all parties. The claimant sought legal advice and agreed to the proposed independent mediator.

The claimant attended mediation. During the mediation process the respondent was asked to send a clarification letter to the claimant setting out his role and responsibilities on his return to work. In that letter Mr. C. explained that the economy of the bloodstock and racing industry had been adversely affected and the stud had to make changes. Mr. C set out the core day-to-day role to which the claimant would be returning.

The claimant was most unhappy with Mr. C's letter and did not believe the downturn in the economy impacted on the stud. He viewed the letter, as a demotion and that he would return to the role of yard worker. The claimant saw this as a breach in his terms of employment. He never returned to the mediation process.

On 26th June 2009 the claimant considered himself to be constructively dismissed.

Following that he was in receipt of illness benefit and following that was in receipt of job seekers benefit. He completed an instructor's course and now trains some children in show jumping.

Respondent's Case:

The respondent is a stud.

Mr. C is Stud Manager. In September 2007 while Mr. F was absent on sick leave Mr. C asked the claimant to take over the running of the yard. Before Mr. F returned to work Mr. C reassured the claimant that he was in charge of the yard but that Mr. F had overall responsibility. Mr. C delegates work to the staff. The stud does not have a big turnover of staff and thinks of everyone as family. It was always Mr. C's intention that the claimant would take over Mr. F.'s role when he retired in

October 2008.

The claimant was absent on sick leave in July 2008. Mr. C met with the claimant and his wife. The claimant asked Mr. C to clarify his role in writing and, as requested, Mr. C wrote to the claimant on 22nd October 2008 asking him to return to work and duly clarified his role. He was very surprised the claimant was not agreeable to the conditions he set out in his letter.

Mr. C was also surprised to receive a letter from the claimant thereafter in which he complained of bullying. He knew there was friction between Mr. F and the claimant but thought it was always a squabble.

Mediation was proposed by Mr. C. Mr. C co-operated with the mediator and set out the claimant's role as he saw it. The mediator also asked the claimant to set down in writing exactly what he wanted in detail but the claimant never did.

ML is secretary of the stud. ML explained that the stud is a very relaxed and easy going place of work. There is a health and safety policy in place and included in that is a bullying and harassment policy. All staff including the claimant are aware of that.

The claimant often spoke to ML about his difficulties getting on with people in the stud. ML regularly told him to speak to Mr. C and to work it out. ML was unaware of there being any formal complaints.

In 2008 the owner of the stud handed over the business to his daughter. She gradually made changes.

ML was asked by Mr. C. to organise a mediation process. She spoke with the independent mediator, who had been agreed by the claimant. She was asked to draft a letter and outline everything the claimant had done in the yard.

There is no one person looking after the day to day running of the yard. The Farm Manager manages employees. Mr. C gives instructions to employees either himself or through someone else in the yard.

Mr. F had worked with the claimant for 20 years. While he was absent on sick leave in late 2007 and early 2008 the claimant took over some of his duties. On his return to work after his illness, Mr. F contended that the claimant objected to him being there. He asked the claimant to drive a horsebox and he refused. Both he, the claimant and Mr. C had a meeting shortly thereafter. Mr. C said that he wanted the claimant to take over the yard but that he had overall responsibility for the running of the stud. Mr. F always helped out wherever necessary. All workers in the stud 'rode out' including the claimant. At no stage did he ever undermine the claimant.

Mr. C had asked the claimant to go to the Newmarket sales. The claimant did not like going to the sales but agreed to go. At that time the claimant never mentioned that his wife was away and that it was a problem for him and had he done so Mr. C would never have asked him to go. There were other employees in the yard who could have gone to the sales instead.

The stud has had to face the realities of the downturn in the economy and as a result of this many horses have been sold and transport of the horses is no longer taken care of by the Stud.

Determination:

The Tribunal has carefully considered all the evidence adduced during the course of this two-day hearing. The Tribunal are not satisfied that, on balance, a constructive dismissal was established by the claimant. Crucial to this finding is the claimant's failure to reply to the respondent's offer as suggested by the mediator, by putting forward his own job description regarding his role in the Stud.

Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)