

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD2369/2009

- *claimant*

against
EMPLOYER

- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this claim at Letterkenny on 17/18th January 2011
and 28/29th March 2011
and 16/17th May 2011

Representation:

Claimant: Mr. Niall O'Neill BL instructed by:
Sinead Bradley, Solicitors, Unit 1, Cedarwood House, Kilmacrennan Road,
Letterkenny, Co Donegal

Respondent: Ms. Sharon Moohan, Barron Moohan O'Donnell, Solicitors, 1st Floor, Cedar House,
Main Street, Ballybofey, Co Donegal

The determination of the Tribunal was as follows:-

Issue:

This case concerns the decision by the respondent company to make the general manager (the claimant) of a business redundant. The claimants claim is that the position he held was not that of a general manager and that the decision to make him redundant constituted an unfair dismissal.

Respondent's Case:

The M.D. of the respondent company gave evidence. The business involved a pet store and garden centre. However the respondent was involved in other businesses which included a boutique, motorcycles, retail and wholesale and they were also involved in the pre packing of nuts for a health store. In 2006 the respondent took over a € 8.5 million property development in Letterkenny.

He became aware that the claimant was looking for a new job and had a good track record. The claimant

commenced employment as a General Manager with the respondent company in November 2007. All managers from the various businesses reported to the claimant and weekly meetings were held. The claimant was given a contract of employment and a salary of € 40,000. The M.D. felt he was capable of carrying out his duties as he had previous experience as the manager of a supermarket. His first job was to oversee the Christmas shop on Pearse Road, Letterkenny. His office was located in the pet shop on Port Road, Letterkenny. He began his day there but would travel around the other businesses during the course of his work.

On January 25th 2008 the claimant underwent a knee operation, and thought he would be absent from work for a period of four weeks. This was known to the M.D. prior to the commencement of the employment. There were complications and did not return until May 23rd 2008. On his return it was agreed he would be given a company jeep. On June 15th 2008 the M.D. interviewed a person (DC) for the position of manager in the pet shop premises on Port Road, Letterkenny. DC was appointed to the position on June 18th 2008 with a salary of € 22,500. In June 2008 the M.D. relocated office to the new premises in Port Road. The idea was to move the businesses to these premises but the pet shop, where the claimant was located, remained in rented premises.

On July 16th 2008 DC resigned as manager of the pet store and re-applied to work as a supervisor. On a day in September the M.D. arrived to the pet store to find it closed. He rang the claimant and was told DC was rostered to work. He rang DC who informed him she was only rostered to work 12 p.m. to 4 p.m.. The M.D. told the Tribunal that he was unaware how stressed DC was over the situation. She left the respondent's employment on September 11th 2008 to take up a position elsewhere. On November 3rd the claimant went out on sick leave and returned on December 4th 2008. On December 12th 2008 the claimant was let go due to the severe downturn in business. It was a redundancy situation and the post has not been advertised since.

On cross-examination he said he was unaware there were any difficulties between him and the claimant. He disagreed that the claimant was given large tasks to perform in short spaces of time or that he had ignored calls from him.

DC gave evidence on behalf of the respondent. She commenced employment as Manager of the pet store in Letterkenny on July 21st 2008. The claimant had informed her that she was not requested to work on Saturdays. However on the day the M.D. went to the store and it was closed the claimant told the M.D. that she had been rostered to work. She was very stressed about the matter and due to personal stress she decided to leave her employment.

Claimant's Case:

MR gave evidence on behalf of the claimant. She began work as a P.A./Receptionist in April 2008 just before the claimant's return from sick leave. She did not have a good impression of the claimant at first because the M.D. had given her to think he wasn't doing a good job.

She found the relationship between the respondent and the claimant odd. The claimant was often disparaged by the respondent and she had been told that the claimant needed to be helped "opt out of the process". She understood this to mean that he would leave his position voluntarily.

She had to draft a list of tasks and give them to the claimant. She felt that the list of tasks were impossible for anyone, there was so much to do on the list. Asked why she thought the list was compiled she replied that she thought it was to make the claimant seem incompetent.

The claimant was constantly asked to do various jobs in various locations in order to undermine him.

Asked what happened when DC left the business she stated that the claimant resumed his duties in the pet store and when she returned again in October he was still primarily there.

MR said that they often had to sit in the office and listen to the M.D. ranting which was usually after

business hours. She found him very difficult to work for. She left the employment at the end of November 2008.

In his sworn evidence the claimant stated that prior to taking the position he did not know the M.D but received a telephone call from him asking him to have a look at his overall businesses. He supposed that the M.D. had heard about his success in the job he held at the time. He had a meeting with him and gave him a verbal report on what he thought of the business operations.

The M.D. rang him again and offered him a position as manager of one of the businesses, a pet store and he was to have a HR only function in the other stores. He began his employment with the respondent company on 21st Oct 2007.

On receiving his contract he was amazed to see that his job description was that of Group General Manager. That had never been discussed. There was also no job description in the contract. His understanding was that his role was to look after the pet-store and help develop similar stores in other locations in the northwest. His role in the other stores had purely a HR function.

All operations were managed from the offices above the pet-store.

Asked about the HR function he stated that it was mainly interviews/advertising/poaching people.

The claimant went to hospital on 14th Jan 2008 for a knee operation.

When he returned to work the M.D. told him that a C.V. had been received from DC. She was experienced and so they had nothing to lose by interviewing her.

She was successful and was appointed as assistant manager of the pet-store on 27th July 2008. Her salary was around €22,500 almost half of his salary.

One week after the appointment of DC the M.D. met with the claimant. He said that he would not be expanding the pet-stores and wanted to know if he was still interested in staying with the company. The claimant felt that things changed at this time, he asked where he was to be located, he was told the pet-store. The head office and administration moved to the new head office location, he remained at the pet store.

He was also informed by the P.A/Receptionist that he no longer had direct access to the M.D.

DC left the company in Sept 2008 and the claimant stated that he had a conversation with the M.D. at that time. Staffing was discussed and it was thought that one person might be let go. He assumed it would be last in first out. The conversation was surprising as the respondent company was buying another business in Northern Ireland at the time.

He went back to managing the pet-store and was working long hours each week but whatever he did it was still not enough. His list of tasks were unrealistic and sometimes he would only get through a quarter of it.

Asked if he felt undermined the claimant said that it was something the M.D. was good at and he was hoping that he would throw in the towel.

On 20th October 2008 the claimant was told by a member of staff that DC was back at head office.

He asked the M.D. what was going on and was told that she was just in for a discussion.

On the 30th October he went into the office and she was at a desk. He asked again what was going on but didn't get an answer.

The claimant later found the M.D. and DC at a business location and was told that she was being re-employed as an Assistant Manager.

The claimant's staff were asking what was going on and he couldn't tell them, he was ignored and left in the dark about everything.

The claimant went into hospital for a further knee operation on 6th November 2008. On Sunday 9th

November the claimant went into the pet-store. He was met by the M.D. who said that he was now running the store himself but the claimant had no doubt that it was being run by DC.

On 14th November 2008 the claimant received a telephone call from the M.D. telling him that he was being made redundant. He advised the M.D. that he was not happy with his treatment, DC was filling his position at a much lesser cost and he would be seeking legal advice.

On return from sick leave the claimant bought his staff in one by one and told them he was being let go. He asked them who they were answerable to and was told it was DC. They only saw the M.D. about once a week.

Under cross examination the claimant stated that the former manager of the pet-store was on €40,000 and that his contract stated position as manager.

He was employed as a manger and moved to the position of General Manager when DC arrived. On her resignation he resumed the job as manager of the pet-store.

DC left her position on a Monday and on the Tuesday he discussed his role with the M.D. They thrashed it out and he was going to manage the pet-store.

Asked if he had told his staff he was being made redundant he said yes, he had thought about it and wasn't offered any alternative.

Determination:

The Tribunal have carefully considered all the evidence and submissions made by both parties in this case over the two-day hearing. The Tribunal find that the claimant was dismissed due to the manner in which the business was run. The Tribunal finds that the job role of the claimant changed over the course of his employment and it does not accept that he was a general manager at the time he was dismissed. However as a manager his failure to make any complaint formally or in writing contributes to the circumstances of his dismissal. Taking this into account the Tribunal awards the claimant the sum of €12,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)