

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE
- *claimant*

CASE NO.
UD 2619/2009
RP 3117/2009
MN 2451/2009

Against

EMPLOYER
- *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr G. Hanlon

Members: Mr M. Murphy
Ms. A. Moore

heard this claim at Cavan on 17th February 2011 and 14th July 2011

Representation:

Claimant: Mr Brendan O'Reilly, O'Reilly, Solicitors, Market Street,
Cootehill, Co Cavan

Respondent: Pierce O'Sullivan & Associates, Solicitors, Market Street,
Cootehill, Co Cavan

The determination of the Tribunal was as follows:

The claim under the Unfair Dismissals Acts, 1977 to 2007 was one of constructive dismissal; accordingly it fell to the claimant to make his case.

Claimant's Case:

The claimant commenced work in October 2006 as a retail manager for a store, which supplied retail grocery/petrol and oil. Initially his salary was €25,000 and this was increased to €30,000 in 2007. He worked a 40hour week with Tuesdays and Sundays as days off.

The employment was uneventful until 19th May 2009 when at the normal monthly meeting discussions arose about the decline in business and what could be done to alleviate the position. Nothing was signed off at that meeting. It was agreed another meeting should be held with all full time staff including the claimant to get agreement on how to proceed with necessary cutbacks. The claimant was informed the next day on 20th May that the meeting would take place on the 21st. At this meeting all full time staff were told that pay would be reduced to minimum wage for

everybody, including the claimant. Part-time employees would be let go and the remaining 4 employees would have to cover seven-day week shifts, including weekends and evenings. This process would begin on the following Monday. The owner suggested that the claimant was very quiet during the meeting, and he stated that he was taken aback, there were security issues and it would be difficult to do rosters with just four people. It was suggested to the claimant that maybe a 3-day week would be better for him because of his family life. The dole office was mentioned, day to day running of shop was mentioned and things got quite heated.

The claimant couldn't face going into work the next day, he sent a text to say he was sick.

Later he received a text from a director (hereinafter referred to as OM) with the telephone number for the dole office.

On the 22nd May the claimant wrote to the respondent stating that he would not accept the pay cuts. The second director H rang him, regarding this letter. H was very aggravated and asked who he thought he was, he would have expected this from somebody else but not him. H asked him if he had checked out the three-day week position with Social Welfare. He informed H he had not, H said "do what you have to do" and hung up. The claimant received a letter from the respondent company on 1st June 2009 requesting a meeting on 4th June. He did not attend. It was after the fact and he felt the company was just trying to cover its tracks. Trust had been lost at that time.

Respondent's Case:

A director of the company (OM) gave sworn evidence.

Substantial losses were being made by the company, things had been left for a few months but had to be addressed. A meeting was held between the claimant and both directors of the company on 19th May 2011. The meeting was the normal monthly meeting and it was explained what the financial position was, and what departments were losing money. The claimant himself said that a radical reform was needed, he had a retail background and maybe a three-day week for everybody would be a way forward. The company were not aware of how that would work as they had no knowledge of Social Welfare. The meeting ended normally and the claimant said that it was up to the owners of the business to come up with a plan.

The meeting of 21st May was attended by all full time staff, the claimant and both directors. Staff were told of a proposal to reduce pay and hours. It was an informal discussion. They were also told rosters would be done over a seven day period. OM asked for their ideas. One person suggested a 3-day week. Each individual was to check with Social Welfare and see how it would effect their situation. The claimant was particularly quiet during the meeting; he then got up and left which OM thought unusual. At that meeting a member of staff looked for a telephone number for Social Welfare. He got the number and sent it by text to everybody to help with their follow up.

The next day, 22nd May 2009, OM received a text from the claimant's wife to say he was sick. She came in later that day to collect his wages and handed in a letter. A Medical Cert was given to the respondent on Tuesday 26th May stating that the claimant was on sick leave until 28th May 2009 citing anxiety as the cause.

On 28th May 2009 the respondent received a letter from the claimant stating that the pay cut was unrealistic and that he had no option but to resign. OM was quite shocked. The meeting was just about proposals, he had asked people to come up with alternatives.

The claimant was a key employee dealing with reps, staffing etc, he was trusted implicitly and it had a negative impact when he left. They sent him a letter by registered post requesting a meeting on the 4th June 2009 but received a form from Social Welfare for signing on 4th June 2009. The form stated that the claimant had resigned his post. The only conclusion they reached was that he had resigned. They never accepted his letter of resignation and thought he was blowing off steam. His position was never filled, the proposals were never implemented. No new rosters or plans were ever drawn up.

The claimant assisted the respondent company in drafting policies and procedures including grievance procedures that he did not use. The company had no contact from the claimant until the Tribunal hearing.

Determination:

The Tribunal carefully considered all the evidence adduced at the hearing over a two-day period. The claimant is making the case that he was constructively dismissed as his employer had created a situation such that he could no longer reasonably be expected to work there. The onus is on the claimant to prove his case on the balance of probabilities.

The Claimant is claiming that he was dismissed by construction as defined in the Unfair Dismissals Act 1977, which states that

“dismissal in relation to an employee means the termination by the employer of his contract of employment with his employer whether prior notice of determination was or was not given to the employer, in circumstances in which, because of the conduct of the employer the employee was or would have been entitled or it was or would have been reasonable for the employee, to terminate the contract of employment without giving prior notice of the termination to the employee”.

The Tribunal are not satisfied that, on balance, a constructive dismissal was established by the claimant. The claimant did not meet the burden of proof required, therefore failed to meet the threshold for a constructive dismissal. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

The claimant resigned from his employment, therefore his appeal under the Redundancy Payments Acts 1967 to 2007 is dismissed and his claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)