

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE - **claimant**

UD42/2010

against

EMPLOYER- **respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Fahy BL

Members: Mr W. O'Carroll
Ms H. Murphy

heard this claim at Galway on 20 June
and 28 October 2011

Representation:

Claimant:

Mr Michael Hegarty, Smyth O'Brien Hegarty, Solicitors,
24 Lower Abbey Street, Dublin 1

Respondent:

Mr David McCarroll, RDJ Glynn, Solicitors,
Aengus House, Long Walk, Galway

Respondent's Case

The then honorary treasurer (NMCS) of the respondent told the Tribunal that he was in that position in 2008 and 2009; he had been a member of the men's committee from 1998. As treasurer he was on the committee of management and was chair of the finance sub-committee as was the claimant who was general manager of the club having formerly held the title of secretary manager. In 2006-7 the respondent took out a loan to finance the redevelopment of the clubhouse and some of the holes (the redevelopment). The loan was over 25 years with interest only repayments for the first five years of the loan. The loan was insufficient to cover the entire cost of the redevelopment with an overspend of over €100k.

Membership of the respondent was to be allowed to rise from 900 in 2007 to 1,000 but in the event

this increased membership did not materialise. The 2009 budget showed a deficit of in excess of €250k. It had been proposed to reduce this by means of a members' draw but the draw proposal was rejected. The respondent then set up a strategic review group which recommended, inter alia, on 7 April 2009 that the position of general manager be declared redundant. The management committee met on 14 and 22 April 2009 and approved an exit package for the claimant. The club president gave the claimant notice of the decision on 5 May 2009 that he was to finish on 14 July 2009.

Under cross examination he confirmed that a management committee meeting took place on 26 March 2009. At that meeting the club captain stated that he was not comfortable with redundancies and asked that all proposals be taken on board in relation to financial difficulties of the club. It was decided that certain proposals be presented to the strategic review group for consideration. The purpose of the strategic review group was to carry out a financial review of the club and make recommendations to ensure the club survived going forward. These proposals included a reduced levy, negotiate a reduction in wage bill and consider various forms of membership. The witness was appointed as a liaison person to bring the proposals to the strategic review group. All employees and club members including the claimant were invited through a staff questionnaire to make their views known to the witness. The claimant did not respond to this questionnaire. He (the witness) attended meetings but was not a member of the strategic review group. He took minutes at some of the meetings but accepts that with the passage of time all of these minutes may not now exist. He was a facilitator for that group and provided them with whatever information they sought. He e-mailed the vice-chairperson of the strategic review group on 27 March 2009 with his interpretation of the management committee's proposals. He did so, prior to the minutes of the management committee meeting of 26 March 2009 being prepared as he wanted to move the process along and did not want to delay the review that was being undertaken. He believes that he accurately brought the proposals of the management committee to the strategic review group but accepts that a reduction in the claimant's wages was not discussed.

The strategic review group, as an independent sub-committee considered the proposals from the management committee and made their recommendations in April 2009. It was up to the management committee to accept or reject the recommendations. The strategic management review group made a number of recommendations one of which was to make the position of general manager redundant. As a member of the management committee he supported that recommendation and in that respect was part of the decision that made the claimant redundant. He confirmed that the strategic review group did not have a copy of the minutes of the management committee meeting of 26 March 2009 prior to making their recommendations.

The next witness known as (BR) gave evidence that he was Honorary Secretary of the club in 2009 and 2010. He was also part of the management committee. He attended the Annual General Meeting on 14 December 2008 where it was proposed that the strategic review group be established to carry out a broad review of the club's finances. The Annual General Meeting did not vote on terms of reference for strategic review group. The group did not have any power to make decisions and he was not a member of the group. The group made a number of recommendations, the majority of which were effected by the management committee. The decision to make the claimant redundant was a very difficult decision but it had to be made due to the condition of the club's finances. As Honorary Secretary he took on some of the claimant's duties along with the Honorary Secretary, the chairperson and members of the course committee. The claimant was not replaced.

Under cross examination he confirmed that the claimant attended management committee meetings and provided information to the strategic review group through the facilitator. The claimant did not

volunteer nor was he asked to become a member of the strategic review group. The findings of the group were not presented to members of the club at an Extraordinary General Meeting. He was present at the management meeting when the decision was made to make the claimant redundant. He was not aware if any consultation had taken place with the claimant prior to him being made redundant.

Claimant's Case

The claimant gave evidence that he was employed as a general manager by the respondent since January 2000. He reported to the chairman of the management committee. During his tenure of employment he increased club membership from 700 to 912. He oversaw the reconstruction of the clubhouse which was redesigned and remodelled. The project was completed within 6 months without any disruption to members. He received good performance reviews in 2006 and 2007 and his 2008 performance review took place in January 2009. He received negative comments in this review in relation to a snag list which had not been completed by the clubhouse builder. He was held responsible for this even though he had not been originally tasked with that responsibility.

Following the establishment of the strategic review group he continued to attend management committee meetings. He was not asked to attend meetings of the strategic review group and when he enquired as to how their work was progressing he was not given any details. He was simply told that they were looking at the club's finances. He understood that the findings of the strategic review group would be brought to the management committee and discussed at an Extraordinary General Meeting. At a management meeting in January/February 2009 he voluntarily suggested taking a pay cut but received no reply to this suggestion. He was never consulted about his position being made redundant and was never requested to take a pay cut. He was given a questionnaire to complete in relation to a review of the club's finances and he encouraged his staff to complete the questionnaire. He did not complete the questionnaire himself as he was dealing with the facilitator (NMcS) on a daily basis. He provided all aspects of financial information to him to be forwarded to the strategic review group. On 5 May 2009 he attended a meeting with the chairman and treasurer and was told he was being made redundant. He was not given any insight into the decision as to why he was made redundant. He was not told of the purpose of that meeting beforehand. He has been unemployed since his dismissal.

Under cross examination he confirmed that he was aware that the club had made a 2.5 million investment in the clubhouse based on a projection that membership would increase to 1000. These projections did not materialize and the club had 854 members on the day of his dismissal. He accepted that the club had financial difficulties and that his position has not been replaced. He told the Tribunal that two of his ex-colleagues who had shorter service than him are now carrying out some of his duties. He estimated that they are carrying out 30% of his work. He has applied unsuccessfully for 11 jobs since his dismissal. He has also carried out some voluntary work and has undertaken a course of study.

Determination

The Tribunal having considered all the evidence from both parties is satisfied that there was a real and genuine redundancy situation. The Tribunal notes that notwithstanding that the respondent did not follow their own procedures for carrying out a review of the finances of the club, the Tribunal nevertheless is satisfied that the outcome of the review shows that the respondent had serious financial difficulties at the time when the claimant was made redundant. Accordingly the Tribunal determines that the claim under the Unfair Dismissals Acts 1977 to 2007 fails and is hereby

dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

