

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE -*Claimant*

CASE NO.
UD1885/2010
MN1837/2010
WT841/2010

against

EMPLOYER -*Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr N. Russell

Members: Mr J. Hennessy
 Mr F. Dorgan

heard this claim at Kilkenny on 24th January 2012

Representation:

Claimant: Eamonn Hayes, Solicitors, 50 New Street, Carrick-On-Suir, Co Tipperary

Respondent: Michael A O'Brien & Co, Solicitors, Castle Street, Carrick-On-Suir, Co Tipperary

The determination of the Tribunal was as follows:

Background:

The respondent is a GAA club. A preliminary issue was put forward by the respondent that the claimant did not have the requisite service to bring a claim under the Unfair Dismissals Acts, 1977 to 2007. The claimant worked at the club under various FÁS schemes and for this work he was paid by FÁS. However the respondent paid the claimant an additional €186 per week for hours that he worked in the club, over and above those included in the FÁS scheme. It was the respondent's case that the claimant's employment commenced on 21 August 2009 and concluded by agreement of the parties on 6 March 2010 and therefore he did not have the requisite service to bring a claim under the Acts.

It was the claimant's case that he was based at the club's grounds under the auspices of various FÁS schemes from the time of 1985, albeit there were sometimes gaps of two years between

schemes. The duties associated with the schemes involved maintaining the grounds. The claimant believed it was during April 1990 that he was approached by a member of the club's committee and asked if he would work in the bar of the clubhouse. The claimant subsequently commenced work in the bar and his work there continued even when various FÁS schemes came to an end. The method of payment varied; he was paid by cheque from FÁS and cash from the club. It was the claimant's case that his employment in the bar was separate from the FÁS scheme and that his employment had commenced in 1990, thus meeting the requisite service for claims under these Acts.

FS gave evidence in support of the claimant. He stated that he too worked at the club as a grounds man under the auspices of FÁS schemes. However, the claimant was the only member of a FÁS scheme who worked in the bar and this work was separate to the FÁS scheme.

Summary of Evidence:

Dismissal as a fact was also in dispute between the parties.

In early February 2010 the claimant was given notice that the secretary of the bar and club committee wanted to meet with him. It was the claimant's evidence that the secretary informed him that the committee had met the previous night and that the claimant's employment was being terminated as the club wanted "to turn over a new leaf."

The claimant queried why his employment was being terminated but no explanation was forthcoming except that the secretary said that one of them had to leave and it was not going to be him. The claimant enquired about a sum of money to mark the long service he had but the secretary told him that the club did not have to pay him anything, as the claimant had never worked there officially. However, two days later the secretary offered the claimant €5,000 and told him that he could work out a period of four weeks notice.

The claimant was unaware of any complaints made against him during the course of his employment nor did he recollect any issues being raised with him about his conduct or behaviour. The claimant stated that he had not received annual leave during his employment with the respondent. For the first few years of the employment the claimant was paid by cash but from 1994 he was paid by cheque (made out to cash) from the pitch and putt account. He outlined his loss since the termination of the employment and his efforts to mitigate that loss.

During cross-examination the claimant denied that there were any issues with his health. He also refuted that he was first offered the sum of €3,200 and subsequently offered the sum of €5,000. The claimant queried why he had not been given the opportunity to attend the bar committee meetings so that any issues with his work could have been put to him.

Giving evidence, the secretary of the bar and complex committee confirmed that the claimant was paid by cash or by a cheque made out to cash. He accepted that this practice should not have occurred. As the claimant's line manager he received complaints at bar committee meetings and so did the Chairman of the committee. The secretary met with the claimant on a regular basis and discussed issues such as the loss of customers and sales figures. Over time the claimant's work had deteriorated but if the secretary raised this issue with the claimant, the claimant would blame his health and say that he was unable for the pressure. This issue also arose during 2008 when the secretary asked the claimant if he would be interested in retiring but the claimant remained in

the employment. However, in the lead up to February 2010 the claimant continually said that if he was given some money he would leave, as he was physically unable for the work. At the same time pressure was coming on the bar committee to improve the bar's service. "Turning over a new leaf" meant the claimant leaving even though he was a close personal friend. As a result the secretary offered the claimant the sum of €3,500 to leave. The claimant indicated that this was not a large enough sum but that if he received €5,000 he would leave.

In or around this time the secretary attended two bar committee meetings at which the matter was discussed but he did not have a record of the meetings. The claimant was delighted when he was given €5,000 to leave. However, the secretary subsequently was informed that the claimant had indicated locally that he was disgruntled but he did not address this matter with the claimant.

During cross-examination he stated that if the claimant had been left in his position "why would he have wanted to leave?" He also stated that the claimant would probably still have continued to work at the club but that he was content to leave once the secretary put a little bit of pressure on him.

The Chairman of the committee gave evidence that he attended the bar meetings. He confirmed that the secretary had informed the committee at one of the meetings that the claimant would be content to leave if he received money. A lot of people were unhappy with the claimant's work and the secretary met with the claimant on foot of such complaints. The general committee wanted the bar to "turn over a new leaf." The Chairman subsequently gave a cheque for €5,000 to the claimant on 5 March 2010.

Determination:

The Tribunal is asked to decide whether the claimant was an employee of the respondent which is a GAA club and when this employment commenced. From the evidence it is clear to the Tribunal that, while on a FÁS scheme, the claimant was asked in a separate capacity to work for the club in its licenced bar and did so from a date in the 1990s. There was some confusion on dates; however, club records indicate that the claimant first commenced working in the bar in 1995. As regards this employment, the GAA club was the claimant's employer. Indeed, the FÁS community employment scheme envisages that participants might seek other part time work during a scheme placement.

There is a complete conflict of evidence between the parties as to how the claimant's employment came to an end. While there can be no doubt that the relevant sub-committees of the club and, particularly the secretary, at all times acted in what they considered to be the best interests of the club and their ambitions for same, they nevertheless terminated the claimant's employment in their efforts to do so. Indeed, witnesses for the club in their own evidence appeared to confirm this to be the case.

Both witnesses for the club spoke of the pressure brought to bear by club and membership for better results in the licenced bar and of the need to "turn over a new leaf". During cross-examination when asked by the claimant's representative if "turning over a new leaf" involved "getting rid of..." the claimant, the Chairman a witness for the respondent answered "of course". Similarly, when it was put to the secretary of the club that the claimant was unhappy leaving the club his responses were that "if he was left there why would he want to go" and "if he was left alone why would he want to go." There is no doubt in the Tribunal's mind but that the claimant was not given any choice in the matter.

In this instance the dismissal was unfair. The respondent decided on a course of action to the detriment of the claimant without any proper regard for the fairness of its actions.

The Tribunal, however, believes that the actions of the individuals involved, while unfair, were well intentioned and believed to be for the benefit of the GAA club with no ulterior motivation as regards the club itself. The Tribunal is aware that the claimant has already received a sum of €5,000 by way of acknowledgement of his service over the years and, in the circumstances, awards him a further €5,000 as compensation under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal also finds that the claimant is entitled to the sum of €744.00 (being the equivalent of four weeks' gross pay) in respect of the outstanding balance due under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The claim under the Organisation of Working Time Act, 1997 is disallowed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)