

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

- claimant

CASE NO.
UD1133/2010
MN1099/2010

against
EMPLOYER
under

- respondent

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr M. Carr
Mr J. Moore

heard this claim at Drogheda on 19th December 2011
and 13th February 2012

Representation:

Claimant(s) : Mr. Aaron Shearer BL instructed by:
Mr. Conor Breen, McDonough & Breen, Solicitors, Distillery House,
Distillery Lane, Dundalk, Co Louth

Respondent(s) : Woods Ahern Mullen, Solicitors, 18 Francis Street, Dundalk, Co. Louth

At the outset the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn.

The determination of the Tribunal was as follows:-

Background:

The claimant was employed as a part-time radio presenter on the respondent's community radio station which was founded in 2002. He commenced as a volunteer but after time he became a paid employee. The claimant's position was firstly part funded by FAS through a Community Employment Scheme. The respondent made up the balance of his wages. Funding for the claimant's position ceased to be paid by FAS in July 2004 as the claimant was 65 years of age. Staff salaries were funded by Pobal including the claimant and the Sales Manager position.

In January 2010 a letter was received from Pobal concerning the respondent's funding. It was to be reduced considerably. Board meetings were held discussing funding, amongst other matters. The claimant was present at these meetings. The respondent company made a loss of

over € 30,000 in 2009 and € 26,000 in 2010. It was decided that due to the reduction in funding restructuring had to take place and two staff would be made redundant, the claimant and the Sales Manager. Other staff took a reduction in wages. In March 2010 the claimant was made redundant and received a redundancy payment. A local company offered to acquire advertising and the monies paid would sponsor the claimant's position for full time hours for a period of three months or half pay for a period of six months. It was decided not to take up the offer. The claimant was not given the opportunity to appeal the decision.

Respondent's Position:

The Treasurer, the past Chairman of the Board and the current Station Manager gave evidence over the two days of the hearing. The Treasurer gave evidence of the loss of funding and general losses of the radio station. He explained that the offer of sponsorship of the claimant's position was made after he was made redundant. The offer was declined but the person in question later booked advertising with the radio station.

The past Chairman gave evidence. He explained that it was regrettable that two staff had to be made redundant. In December 2009 staff were put on short-time. On January 18th 2010 staff resumed full-time hours. All staff were aware of the financial situation of the station but no staff were spoken to individually about redundancy.

On February 10th he met with the Sales Manager and the claimant individually concerning their impending redundancies. There were no other positions available. They would receive their payments on March 10th 2010. The claimant and the Sales Manager were invited to remain working as volunteers.

On March 15th 2010 he was made aware of an email of an offer to sponsor the claimant's radio programme for a period of either three or six months. He met the intending sponsor the following month. He explained that the claimant was no longer employed. He agreed the claimant's programme had been a flagship programme.

The Station Manager gave evidence. He explained that he had contacted the local Citizens Information Centre to gain advice in making staff redundant. He explained that the respondent company felt the meetings were a form of consultation. He had taken a 10% reduction in his wages.

He was aware of the offer of sponsorship for the claimant's position after he was let go. He explained that they had to abide by certain rules and the impending sponsor could not decide how his advertising / sponsorship monies were paid.

Claimant's Position:

The claimant gave evidence of loss only. He explained that he had not acquired a paid position since he was let go in March 2010. He had applied to one local radio station but was unsuccessful. He felt his age had a part to play in his lack of employment. He now worked as a volunteer on an internet radio.

Determination:

The Tribunal having heard the evidence adduced by the respondent acceded to a request by Counsel for the claimant for the Tribunal to consider granting a direction dismissing the respondent's case.

Having firstly considered this evidence and secondly as a consequence to this application, the Tribunal is satisfied that because of an agreed procedural deficit in the respondent's behaviour which the Tribunal finds to be of sufficient significance that the respondent has failed to discharge the onus placed upon them to satisfy the Tribunal that they have presented a case which requires a response from the claimant.

It is therefore found and determined that the claimant was unfairly selected for redundancy and thus was unfairly dismissed. Having heard the evidence of the claimant in relation to his efforts to mitigate his loss, the Tribunal, even allowing for and accepting his assertion that his age was a discouragement, finds and determines that the claimant did not make a reasonable and sustained effort to obtain employment and this contributed to his loss.

The Tribunal awards the claimant the sum of €6,500.00 as compensation for his dismissal, under the Unfair Dismissals Acts, 1997 to 2007, having allowed for a payment to him of €3,559.50 in respect of redundancy.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)