

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD2304/10

- claimant

Against

EMPLOYER

- respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr W. Power
Mr T. Brady

heard this claim at Dublin on 4th April 2012 and 23rd May 2012.

Representation:

Claimant: Ms Linda Hynes, Leman, Solicitors, 8-34 Percy Place, Dublin 4

Respondent: Mr. Paul Dunne, IBEC, Confederation House, 84/86 Lower Baggot Street
Dublin 2

The decision of the Tribunal was as follows:-

Respondent's Case:

The respondent is engaged in the installation and maintenance of elevators and is UK based. The company also has an Irish operation based in Dublin. Head of HR (RG) is UK based. For the last ten years he has responsibility for the Dublin operation.

The claimant had worked in the UK for many years as was General Manager before he was appointed in early 2008 to MD to the Irish operation. He replaced PMcC in that role. PMcC's company vehicle during his tenure was a red Saab. The Dublin office is a stand alone operation. The claimant's terms of employment entitled him to two flights home per annum. His family moved to Dublin with him. Approximately thirty five employees worked in the business there. Some staff had company cars depending on the level of work carried out by them.

Company cars are leased and fuel cards are provided to employees. The Dublin office is managed by the Finance Department in the UK.

The claimant took his own company car to Dublin with him.

The Finance Department in the UK usually processes all invoices. That Department queried some invoices and forwarded them to RG. Queries were raised concerning the claimant's son availing of a ferry trip and also the pumping out of incorrect fuel from a vehicle in Dublin.

Following a meeting with KH at which the Irish operation was discussed, and at which KH raised the issue of the claimant visiting the UK quite often, the claimant and his wife refuelling both his car and his wife's car using the company's fuel card, RG carried out an investigation. Invoices were raised for ten trips home, others were claimed through expenses and there was a query on the company's red Saab.

On 5th August 2010 RG and KH met the claimant in Dublin. The restructuring of the business was discussed. There was an intention to realign the Dublin and Belfast overheads. Issues at hand were discussed. The claimant did not dispute the many ferry trips he availed of. He had not been keeping count. The claimant contended that it had been difficult for him and for family reasons he had returned home a lot. The claimant felt he had the right to do what he wanted to do. He contended that nobody was interested in him and he was left to his own devices.

The claimant initially when questioned about the red Saab said 'what red saab' and then admitted that his wife used the car more or less. He also contended at that meeting that the red Saab was too good to give to the salesman who had been recruited to the Dublin office. It became apparent that the claimant was authorising his own expenses. At the conclusion of that meeting the claimant was suspended with pay.

RG carried out a further investigation into invoices raised in Dublin and paid by the company. Invoices were raised for car leasing and ferry trips and excessive amounts of fuel were raised through expenses. It became apparent that two cars were being refuelled.

RG and KH met the claimant again on 23rd August 2010. RG chaired that meeting. The claimant openly admitted that he was entitled to things not stated in his contract. He felt it was his business and he was justified in availing of up to thirteen trips to the UK. He thought he had the responsibility to chose to authorise his own expenses.

The claimant arranged most of his relocation to Dublin on his own. RG did not recall the claimant complaining. The claimant had been furnished with the expenses policy but chose not to adhere to it. The claimant had been well thought of.

KPT is CEO since March 2010 and responsible for the UK operations and the Ireland operation. The claimant reported to him. KPT was furnished with an investigative report

prepared by RG. He read through this report and invited the claimant to a disciplinary meeting on 31st August 2010. The claimant raised his clean record and length of service with the company as mitigating factors. KPT considered what the claimant had to say at that meeting, he considered removing the claimant from the Irish operation and moving him back to the UK, but there had been a breach of trust and KPT felt he could not really offer the claimant a job elsewhere. He considered the claimant's length of service with the company. It was clear that the claimant had been evasive about the red Saab car and it became very apparent that he was not telling the truth to RG. The claimant knew at all times that what he was doing was incorrect. He was acting as if the company were his own. KPT kept coming back to the breach of trust.

KPT concluded that the claimant's behaviour amounted to an act of gross misconduct. The relationship between employee and employer had been damaged and KPT reached the decision that the claimant's employment should be terminated with immediate effect. The claimant was offered a right of appeal. He appealed the decision to dismiss him but was unsuccessful in his appeal.

Claimant's Case:

The claimant had worked in the lift industry for over 20 years and commenced employment as an apprentice lift technician in 1989 and promoted to Supervisor, Operations Manager and ultimately General Manager.

In 2008 RK, MD in the UK offered the claimant the role of Managing Director of the Irish operation located in Dublin. He neither had disciplinary issues nor performance issues during his tenure.

It was a major decision for the claimant to relocate to Dublin. He deemed the move to Dublin to be a good career progression. He was advised in advance by RK that the Irish operation was in a complete mess and was losing money. He had a good working relationship with RK. He was not provided with any assistance from the company with his move. He was to and fro to Dublin over an eight week period. He rented a house for his family there.

Before he commenced working in Dublin four to five employees were made redundant. There were thirty to forty employees working there, such as engineers, supervisors and sales staff. The company were not selling lifts in Ireland. However, it was servicing lifts in general and some escalators. There were far too many employees and no procedures in place. Quotations were incorrect and the claimant had to try to streamline the business. Everything was in disarray. Twenty to twenty five vehicles were leased in Ireland. The claimant had to also take on the role of Fleet Manager. Everything was centralised in the UK.

The claimant was only a few months in his role when he was left in the position that he had to make fifteen employees redundant. He had no assistance from RG despite assurances that

RG would attend meetings with him. He had to negotiate the redundancies with the unions. LIFO applied.

The claimant and his family were finding it difficult to settle in Ireland. He spoke to RK about his concerns. RK's response was that he was the right man for the job and encouraged him to stay. RK assured him that he was doing a good job in Ireland.

Every month the company was experiencing losses in the region of €8,500.00. The UK operation held regular branch meetings and excluded the claimant from them. The only person who knew him was RH.

When the claimant became aware that the Directors and senior managers were being made redundant, he sought legal advice. He was concerned about his own role. A service manager who had worked in the UK for five to six years was made redundant. The claimant had a very good relationship with him.

The Revenue Commissioners carried out an audit review of the Irish operation. All the accounts were held in the UK and the claimant sought help from the UK. Accounts were to be forwarded to him on the day of the audit but unfortunately were not. As a result the company received a huge fine.

The claimant was feeling more and more isolated and was very stressful. He had no support. RK then told him that he was resigning. The claimant was very worried as this was his last tie with the UK.

On 5th August 2010 he attended a meeting with RG and KH. He was told there was a proposal to restructure the Irish operation which could affect his position with the company. Other matters were then discussed. He was questioned about his use of a red Saab car on which purchase orders had been raised after the lease ran out. The car had been used by the previous MD. When the claimant started in his role he used this company car. In April 2009 he moved his family to Dublin. His wife used the red Saab car. There was twelve months left on the lease. The claimant's wife then used the car for a further twelve months. The claimant contended that he never got around to sending the car back.

His wife used the company fuel card on a few occasions and inadvertently refuelled the car on an occasion with the incorrect fuel. The claimant contended that his actions in allowing his wife to use the company car were a mistake.

The claimant mistakenly thought he was entitled to four trips to the UK per annum instead of two trips. He availed of up to twelve ferry trips home instead of flights. He contended that RK authorised these trips in advance for him.

The claimant felt angry, annoyed, shocked and flabbergasted when he was dismissed from his

employment. He contended the respondent should have taken into account his circumstances, the stress he suffered and the difficulties he experienced and also his length of service. He believed the respondent wanted to make him redundant.

Following the termination of his employment he was unable to secure alternative work in Ireland. He decided to move to Scotland where he secured work.

Determination:

In considering the evidence the Tribunal has regard to the claimant's long service and excellent record. The Tribunal also has regard to the difficulties he had to face in managing the business in Ireland, with less support than he might have expected.

On the other hand the Tribunal finds that the claimant's conduct in relation to the red Saab car which he gave his wife exclusive use for a long period (including the use of a company fuel card) amounted to a serious breach of trust and was "a substantial ground justifying the dismissal".

The overuse of the claimant's allowance for family trips back to the UK by itself would not be so serious if taken in isolation. However, taken in conjunction with the matters affecting the red Saab car, this adds to the totality of the case.

The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd) _____

(CHAIRMAN)