

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE
– *claimant*

against

EMPLOYER
– *respondent*

under

CASE NO.

UD1921/2010
RP2592/2010

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B.L.

Members: Mr. J. Goulding
Mr. P. Woods

heard this claim in Dublin on 19th January and the 15th March 2012.

Representation:

Claimant: Mr. Gareth Robinson B.L. instructed by Ms. Georgina Robinson, Keans,
Solicitors, 2 Upper Pembroke Street, Dublin 2

Respondent: Mr. Tiernan Lowey B.L. instructed by Matheson Ormsby Prentice,
Solicitors, 70 Sir John Rogerson's Quay, Dublin 2

The determination of the Tribunal was as follows:-

Background

The claimant was employed in a Church which relied on its congregation, the public and tourists for income. Due to the downturn in the economy, the church could no longer pay for its staff members and had to make one of them redundant.

Respondents Case

The vicar of the congregation gave evidence on behalf of the respondent. He was appointed to this position in December 2008 and started in March 2009. Their church dates back to the 1700's and they have an emphasis on outreach and charitable works. The claimant was employed as a vergers in 2005. His duties included keeping order in the church and affording a welcome to visitors.

When he commenced in the church there was a general feeling that work needed to be done. Shortly after his arrival the church closed for three months to complete the internal decoration. This work was funded by a legacy left to the parish. He explained to the Tribunal the role of the select vestry which is made up of 14 members and two church wardens. They are responsible for the 3Fs' finance, fabric of buildings and furnishing and are akin to a board of management of a company. There was an awareness that they were running on a deficit. At the AGM at Easter 2010 which is opened to all in the parish, the claimant was also present. There was a general air of shock when they heard the deficit was so large and that they were in a difficult situation.

Several things were done to relieve the situation. Evening events that were normally stewarded by the claimant were now done by church volunteers; the cost of hiring the church for events was doubled. Also the church was opened at weekends for tourists and was staffed by volunteer members of the congregation. The curate was transferred with his and the bishop's agreement as they could no longer afford his stipend. The parish administrator's hours were reduced to part-time and a pay freeze was implemented. No cheques over €100.00 were written without the approval of the select vestry.

When he arrived in the church they had contract cleaners in place however they could not afford this so they ceased their contracts and recruited a sexton after the summer 2009.

A sexton cleans and maintains the church. They decided to merge the role of the vergers and the sexton. He had looked at the role of the vergers in another church of Ireland parish where the vergers carry out the cleaning also. This decision was not taken lightly by the select vestry but it was the consensus of the members that one job was adequate. However the select vestry are made up of volunteers and they had no desire to make anyone redundant. When this new role was created both the claimant and the sexton were invited to apply for this position. They drew up selection criteria for this new role in consultation with the two churches that also had this position and from their own knowledge of what the two roles entailed. The position required a person with good communication skills as they wanted to increase tourism, personal initiative and efficiency. Both candidates were given a copy of the job description and selection criteria. They were also invited to provide alternative suggestions that would make the staff change proposed unnecessary and to avoid a redundancy.

The claimant and the sexton were interviewed by GF the HR member of the select vestry and

AOR the parish administrator. Since the claimant was made redundant he has not been replaced.

Under cross examination he explained they had got rid of the contract cleaners due to the cost and as a result of this FD had been recruited to take on the role of sexton. He had little knowledge in respect of the disciplinary procedures against the claimant.

GF has been involved with the respondent for over forty years. In Spring 2009, while he was attending a service, a member of the congregation asked him if he would be interested in a position on the Select Vestry.

An Easter Vestry is called each year over a three week period and normally six members leave and five or six join. He agreed to the proposal and was appointed to the Select Vestry which is made up of members aged forty to seventy years of age and who are mainly retired. There are seventeen members in total.

In September 2009, he was asked by the members of the Select Vestry to take on a human resource role as a number of retirements had occurred. GF said he has worked in the private and public sectors and has worked in a supervisory role for the past twenty years. He also has attended a number of health and safety courses.

On the end of year accounts there are two descriptions of staff, Clergy and Sextons. This document was drawn up by the Auditor. The term Sexton is used as a catch all for the front of house staff. The end of year accounts showed the cost for "Sexton" had increased when FD was hired as a cleaner. The respondent had used contract cleaners but the view was they were not working well. This figure also includes the redundancy paid to the claimant and the ending of the contract cleaner's contract.

During early 2009, the former Vicar retired and the current Vicar G did not take up his role until March of that year. There was a period where the respondent had no clergy. There was also a legacy payment left to the church for repairs. This donation was used for the refurbishment works.

In February 2010, a disciplinary matter occurred. AOR who was appointed the Parish Administrator in October 2009, approached GF regarding the claimant. GF advised her to write to the Select Vestry.

The claimant had received a verbal warning in early 2009. When AOR wrote to the Select Vestry, GF was advised to get legal advice. Following this he wrote to the claimant outlining the allegations. He wanted to have an airing. He and LJ (Select Vestry) met the claimant and his representative to discuss the allegations.

Following the meeting he wrote to the claimant. The purpose of this was to correct the claimant's behaviour and put the incident behind them. The claimant was informed he could not work on three concerts. The claimant appealed his decision to AV who upheld GF's findings.

AOR told GF the claimant's performance had improved. On the 8th April he sent the claimant a letter regarding his improved performance. Normally warnings are kept on file for twelve months but they decided to only put it on his file for six months. This is reflective of the Select Vestries attitude to their employees at all times. This was in no way connected to the selection for redundancy.

In May 2010, a new Select Vestry took up its position. Twelve members stayed on from 2009/2010 and five new members joined. There were weekly meetings about the financial position of the respondent. Volunteers were asked to do evening choirs and AOR went from full time to part time. It appeared their money could run out by the end of the year.

In June it was decided to look at the staffing numbers. They could not sustain the costs and it was decided to make staff redundant. One of the front of house staff was to be made redundant and a new caretaker role was to be created.

The caretaker role and selection criteria was agreed. Consideration was given to the length of service. The claimant and his colleague were asked to apply for the new caretaker position. GF wrote to the both on the 20th July 2010 inviting them to a meeting to on the 22nd to discuss their future employment.

At the meeting on the 22nd July, GF outlined the financial position and told the employees they did not have the money to pay for the current staff. He gave them both a copy the selection criteria and asked them to apply for the new position by 1:30pm on the 26th July. GF also gave both his mobile number in case they needed to contact him.

The claimant said he would have to think about this and get advice. He asked about redundancy and GF told him he hoped they would be able to pay above statutory.

The other staff member applied for the caretaker role. At 10:20am on the 27th July, GF received a phone call from the claimant asking about his pension entitlement. He did not know about this and told the claimant he would ask at the church. He met the claimant that afternoon at the church and told him there was no pension arrangement. He asked the claimant if he intended to apply for the position. The claimant asked about the salary and a severance package. He asked the claimant again if he was interested in the caretaker role and he said he was.

On the 28th July while he was on his way to work, he received a phone call from the church to say the claimant had sent him a letter. He took the day off work, collected the letter, wrote a response addressing the claimant's concerns and handed it to the claimant that afternoon.

Only he and AOR were in a position to score the marks for the caretaker role. He printed off blank sheets, and gave AOR copies to complete. He went home scored both and the following day collected the sheets from AOR.

The claimant and his colleague were invited to a meeting on the 29th July and were allowed to bring a person with them. GF informed the claimant that he had been selected for redundancy and gave him a letter to that effect. The claimant was due to finish on the 27th August 2010.

On the 1st August he wrote to the claimant stating that they would allow him paid time off to attend interviews and outlining his redundancy package.

On the 5th August, the claimant wrote to the Select Vestry appealing his selection for redundancy. The Select Vestry were asked to stay back after a service and the letter was read to them. A motion was put to the group by one of the members that the claimant accepts his redundancy package by the 16th August or the ex-gratia payment be removed. A letter to this effect was sent to the claimant on the 8th August by the Honorary Secretary.

On the 13th August, GF received a phone call from T who said she worked in a community association and that the claimant had asked her to mediate between them. He told her he was part of the process and there was no issue with the claimant.

He wrote to the claimant on the 17th August stating he had received no response by the 16th August regarding his acceptance of the redundancy package.

The claimant was given a number of cheques. He returned the cheque for his redundancy payment stating he was taking a case to the Employment Appeals Tribunal.

During cross-examination GF said he knew the claimant from attending services at the church. He said the claimant was not doing maintenance as this was done by contractors. He had never attended a Select Vestry before but it was no surprise there was financial difficulties.

He was asked by the Select Vestry to review concerts. He had taken up a health and safety role and asked the claimant to attend a fire safety course. When he attended a concert he was shocked to find the emergency fire doors blocked. The claimant was a steward at the concerts and it was his role to ensure health and safety procedures were dealt with.

Claimants Case

The claimant started working for the respondent in 2005 as the Vicars lay. The Vicar retired and he took up the role of Verger setting up services, books and welcoming tourists. He had a working relationship with AOR. She used to do flowers in the church, but when she got the PA role she didn't seem to get on with him. The claimant said he was always open to improvement

and denied he did not do his job properly.

He had been on the Select Vestry and had heard of the financial problems. However he had not seen any evidence.

When they hired Mr. D the claimant was told he was a cleaner. It was only after he received his warning that he realised Mr. D was a Sexton. He did apply for the caretaker role on time. It was exactly the same job he was doing. He felt the scoring system was biased, he didn't know who was doing the scoring.

When JB was the PA, he would take the bookings for concerts and give him the details. JB would set them up, give the claimant the information and the claimant would open the church.

During cross-examination he said it would have been cheaper to let Mr. D go.

Determination

The Tribunal has carefully considered the evidence adduced over the course of this two day hearing.

The Tribunal is satisfied that the respondent business was struggling to survive and it proved necessary to reduce staff numbers, despite the best efforts of the respondent. The claimant was offered the chance to suggest ways to prevent the respondent having to make staff redundant and the criteria used by the respondent in selecting the claimant for redundancy was reasonable in the circumstances.

Accordingly the claims under the Unfair Dismissals Acts, 1977 to 2007 and the Redundancy Payment Acts, 1967 to 2007 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)