

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE *-claimant*

CASE NO.
UD2205/2010

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms S. McNally

Members: Mr. P. Casey
Mr D. McEvoy

heard this appeal at Cork on 17th January 2012

This case came before the Tribunal by way of an employee appeal of the Rights Commissioner Recommendation ref: r-085793-ud-09/DI.

Representation:

Appellant: Ms. Colleen Minihane, SIPTU, Connolly Hall, Lapp's Quay, Cork

Respondent: In Person

Background

The claimant commenced employment as a boatman with the respondent in 1998 and is claiming he was constructively dismissed. The Rights Commissioner Recommendation found in favour of the claimant and awarded him €1,980.00 as compensation. This appeal is in quantum only.

Claimant's Case

The claimant's employment changed in June 2009 when a director of the respondent said he would have to work one week on and one week off and claim from Social Welfare during thesecond week. The working hours before that was based on a two week cycle of working Monday to Monday then the second week off, but paid weekly. The difference was the secondweek would have to be claimed from Social Welfare although the working hours had not beenreduced. The claimant asked for alternative options or to be made redundant. The respondentrefused both options.

A meeting was held at the end of July with the three directors and three employees. The claimant stated that he could not afford to work the new hours and was not in a position to claim Social Welfare because the week on/week off system meant he was not available or actively seeking employment. The claimant accepts that a 3-day week was probably not viable. The claimant was left with no option but to resign as he could not afford to work the new hours.

The claimant's only alternative was to set up his own company. The company was registered on the 26th of August and he had tendered his resignation of the 18th of August. The claimant's company was not in competition with the respondent. The company never made an income. The claimant did not work with his son in the company during his employment with the respondent.

Respondent's Case

The respondent gave extensive evidence of how the downturn affected them. Evidence was given on what cost cutting measures they came up with in order to keep everyone employed. The respondent was determined to keep all the jobs and not have any redundancies. The claimant was not happy about the new shift and on the 18th of August he rang and said 'he was jacking up.' Later that day the respondent received a phone call from a customer stating that they had been handed a brochure for services in direct competition to the respondent. The competitor was the claimant's business.

Determination

The claim under the Unfair Dismissals Acts, 1977 to 2007 was one of constructive dismissal; accordingly it fell to the claimant to make his case. Having carefully considered the evidence the Tribunal find that the claimant did not meet the burden of proof necessary to make a claim of constructive dismissal. The claim under the Unfair Dismissals Acts 1977 to 2007 fails therefore upsetting the Rights Commissioner Recommendation ref: r-085793-ud-09/DI.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)