

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE -*Claimant*

CASE NO.
UD325/2011
RP381/2011

against

EMPLOYER -*Respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr E. Handley
 Mr A. Butler

heard this claim at Dublin on 17th May 2012 and 11th July 2012

Representation:

Claimant: Padhairc Lyons B.L. instructed by O'Reilly & Co, Solicitors,
 The Old Courthouse, 4 Ludlow Street, Navan, Co Meath

Respondent: Ms. Aoife McCarthy B.L. instructed by Mr Brendan Frawley,
 Kennedys, Solicitors, Ulysses House, Foley Street, Dublin 1

The determination of the Tribunal was as follows:

The Tribunal has carefully considered the evidence adduced over the course of this two day hearing. The claimant's case is that he was unfairly dismissed, that no bona fide redundancy situation existed and even if there was a redundancy situation the process of selection was unfair and unreasonable in all the circumstances.

The claimant believes that there is still an opening for a head tennis coach in the respondent tennis club albeit this work is now largely being covered by unpaid members on a voluntary basis. The claimant points to a discussion document created within the club at committee level wherein the long-term plan is purportedly to retain a tennis director at some point in the future. The respondent denies this will ever be done.

In looking at all the facts and circumstances the Tribunal must bear in mind that the onus rests with the respondent to show that a genuine redundancy situation existed and that they acted fairly and reasonably in all the circumstances. The claimant had been with the tennis club for over ten years in the position of head coach. The claimant had a salary and there was an expectation that he would develop junior tennis for the remuneration received. In addition to his obligation to the junior development there was an expectation that the head coach would also be expected to make himself available to give hours to the coaching of other sections of the club such as men's seniors.

Over the course of the ten years working with the club the claimant's salary went up to about €13,000 per annum with an expectation to provide about three hours per week training over and above his junior development work. It was accepted that the position included an element of administrative and/or preparation work for every given week. There can be no doubt that the concept of drawing down hours was not working. Neither of the parties were looking to ensure that the hours were being used up with the result that for example in 2009 it appears that only half the hours were being used. The respondent blamed the claimant in this regard but there was no evidence of a lack of willingness on the part of the claimant and, in fact, there appears to have been very little communication between the head coach and the club captains. If the claimant was refusing to carry out requests made of him then he should have been disciplined. This never happened and if the contract was not working should there not be an onus on the club to revisit the contract rather than take the steps it did?

It is common case that at the beginning of 2010 the claimant as head coach went to the Chairperson and indicated that hours were not being used and the Chairperson said that he would take it up at committee level. Instead of looking at this situation together the claimant's next contact with the committee is an indication from the Chairperson that his job is being looked at for the purpose of being terminated.

It was quite clear that the committee did not take advice on the way to approach redundancy in the workplace. The Tribunal accepts that the tennis club, no more than any enterprise in the country, is entitled to restructure and rationalise in response to a downturn in turnover and income available. The claimant's counsel described the decision to make him redundant as having been made by "acclaim" and there is an impression given that the committee gave no real consideration to the alternatives available. The committee was anxious to make the saving of €13,000 per annum and targeted the claimant's job as being the most expedient way of making the saving. In addition to the financial reasons given, the club also relied on the fact that the head coach duties had diminished to the point where the position of head coach was no longer required. The respondent was relying on a duality of reasons for the redundancy.

It seems most unfortunate from the claimant's point of view that he had no voice at the committee table because any reasonable assessment of the situation might have allowed an alternative arrangement to be made. It seems that the club members have taken on the burden of the organisation, administration and preparation required in the running of the club and certainly that aspect of the head coach's job has disappeared together with the

whole drawdown of hours which was never fully operational in the first place. However, it is quite clear that the coaching aspect of the head coach's job is still there and being carried out by the claimant (in private capacity) alongside many other coaches also available to do coaching for the club. Unfortunately, for the claimant his coaching work is not guaranteed and he has no security of work nor was the concept of guaranteeing him work ever considered by the committee as might have been reasonable looking at all the circumstances in totality.

The claimant is left in a precarious position having been given no opportunity to retain any portion of his job or any portion of his guaranteed income. The claimant is now beholden to his former employer and whilst the figures show he still earns a steady income from the work that they contract out to him, he cannot be sure that he will receive that work into the future.

The Tribunal therefore finds that the claimant has not been treated reasonably and fairly in all the circumstances and he must succeed under the Unfair Dismissals Acts, 1977 to 2007, and he is duly awarded €26,000. The Tribunal notes that the claimant has already received redundancy monies in the sum of €5,960, which should be deducted.

The Tribunal dismisses the claim under the Redundancy Payments Acts, 1967 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)