

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE-*Claimant*

CASE NO.
UD2031/2010
RP2758/2010

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. K. T. O'Mahony B.L.

Members: Mr J. Hennessy
Mr J. Dorney

heard this claim at Kilkenny on 2nd April 2012

Representation:

Claimant: In person

Respondent: A director of the company.

The determination of the Tribunal was as follows:

It was the claimant's case that he was constructively dismissed from his position as projectmanager. The claimant was employed with the company from July 1995. In May 2001 he was offered a directorship which he duly accepted, the relevant paperwork was completed and his PRSI contributions changed from Class A to Class S but he did not have any shares in the company.

It was the respondent's position that the claimant was a highly valued member of the team and was well thought of as was shown by the fact that he was made a director of the company. When the claimant commenced employment it was as an assistant to the directors and he later progressed to the position of foreman. The claimant accepted that he had not been appointed to the role of project manager.

In December 2008 the employees of the company accepted a 10% pay cut. The claimant's position was that he "readily accepted" the pay cut given the economic situation. In May 2009 a further 27% pay cut followed. In January 2010 the claimant was reduced to a three-day week.

He calculated that the pay cut and the reduction in hours to be an overall reduction of 62% in his remuneration. The claimant accepted that he was placed on a three-day week due to a

shortage of work at the time. The three-day week only lasted from the 21st January 2010 to week ending 5th February 2010. A director of the respondent company (the director) outlined that the company's turnover decreased over the years to 1.3 million in 2010 from a high of 9.3 million in 2006. The number of employees had dropped to 12 in 2010 from 50 in 2005; around 25 of those had been made redundant. Many of the employees had been made redundant by the respondent.

The claimant mainly worked on one factory site. In February 2010 there was a change to his responsibilities and duties as he was instructed to spend no more than 1.5 hours on that site and another director was to supervise the site while the claimant was to relocate to another site. The claimant outlined to the Tribunal a comment that the director had made to him about needing to get him "out of here" which occurred during a meeting regarding proposed modifications to the site on which the claimant mainly worked. The director's position was that the work on the factory site was seasonal and most of the work which the respondent carried out on the site had been done at that stage. It was in this context that he made the comment about needing to get the claimant "out of there".

It was in or around this time that the claimant decided to resign his position. He submitted a letter of resignation on the 19th February 2010 stating that he was resigning as a director with immediate effect. However, he continued to perform his duties as project manager for a further three weeks until the 12th March 2010. In reply to questions from the Tribunal, the claimant confirmed that he resigned as a director of the company shortly after the three-day week was implemented.

The claimant resigned on the 19th February 2010 as he did not believe that a five-day week would continue and thought that a three-day week would be implemented again. The respondent's position was that the claimant would have been the last person to be placed on a three-day week as he was highly regarded by the company. The director was 67 years of age and had intended reducing his involvement in the company but he had to work six days per week when the claimant left. The director believes that if the claimant had not left his position he would still be a major player in the company. It was a shock to him to receive the claimant's resignation but he thought that perhaps the claimant had private plans of his own relating to work. In referring to the claimant's evidence about a couple of incidents that prompted his resignation, the director stated that he was not aware of these incidents nor were any grievances brought to his attention.

Subsequent to the claimant's resignation the parties met and the respondent agreed to the claimant's request to pay him a redundancy lump sum. According to the claimant he had sought the payment to reflect the level of work he had put in and the fact that he was leaving the company under duress. However, following an investigation by the Scope Section of the Department of Social Protection the company rescinded this offer. The director of the company outlined to the Tribunal that the company had incorrectly regarded the claimant as being self-employed for the purposes of PRSI contributions. The issue regarding this only came to light after the claimant's employment had ended and therefore had not been a reason for the claimant to leave his employment. The company has since paid all contributions that had been owing to the relevant department. It was the respondent's position that this was a genuine mistake by the company. The claimant accepted this.

Determination:

The respondent's error as regards the payment of PRSI contributions for the claimant was agenuine error and was subsequently resolved.

Due to the decline in the respondent's business a pay cut was implemented across the company and the majority of employees were on reduced hours. The claimant had neither communicated a grievance to the respondent nor in any way indicated that he was dissatisfied with the reduction in his pay. The director's evidence as to the context and reason for his comment that he needed to get him off the site where he mainly worked was not challenged. The claimant misunderstood the comment. The claimant's leaving the company was pre-emptive.

The Tribunal finds that claimant resigned from his employment and that there had not been a dismissal, constructive or otherwise. Accordingly, the claim under the Unfair Dismissals Acts 1977 to 2007 is dismissed. As there was no dismissal the claim under the Redundancy Payments Acts 1967 to 2007 also must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)