

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

EMPLOYEE

-claimant

against

EMPLOYER

-respondent

under

CASE NO.

UD1242/2010

MN1178/2010

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Meghen

Members: Mr G. Andrews
Mr J. Flavin

heard this claim at Limerick on 14th February 2012
and 19th April 2012

Representation:

Claimant: Donal O'Rourke BL instructed by Hogan Dowling McNamara, Solicitors,
Castletroy House, Dublin Road, Limerick

Respondent: Ms Sinead Mullins, IBEC, Confederation House, Baggot Street, Dublin 2

Background:

Dismissal was in dispute. The respondent maintained that the claimant resigned from his employment. The respondents were originally a family firm that was taken over by an investment group (A). The claimant's father remained on as Managing Director after the takeover. The claimant worked with the respondent since 2002 on a part-time basis while in school and college. He commenced on a fulltime basis as assistant general manager in November 2008. The Tribunal heard opening statements and evidence to establish whether the claimant resigned or if he was in fact dismissed.

Opening statements

According to the respondent the claimant attended a meeting on the 29th March 2010 with KB (general manager/chief organiser). KB called this meeting as the claimant had failed to turn up for work on Saturday 27th March 2010. At a second meeting later on in the evening of the 29th the claimant informed KB of his resignation. The respondent maintained that the claimant set up a company in direct competition of them with seven days of leaving.

Claimant's evidence:

The claimant worked on a part-time basis with the respondent during school and college and also on retainer when they were short staffed. He comes from a family of four generations of scrap metal dealers and his father was the managing director of the company. When group A took over his father remained on as Managing Director. At this time he was in college and his perception from outside was that the transition went smoothly. In 2007 prices for scrap metal was high.

When he was offered the position as operations manager reporting to AB the general manager at the time, he thought it was a good opportunity. He received his terms and conditions of employment and was on a salary of €40,000.00 per annum. Informally AB told him that all going well he would most likely takeover the role of general manager and his salary would rise to €80,000.00. His hours of work within his contract are Monday to Friday 8.00am to 5.30pm, however he worked more than that, if work was to be done he did it.

Things started to take a downturn when he received a section 55 to shut down a processing plant, commodity prices dropped and the recession kicked in. The respondent counteracted this by introducing layoffs and redundancies, which meant at times they were short staffed, which put him under pressure. Although he works well under pressure, this pressure did not abate. KB was recruited as the financial controller by his father before group A took over. Group A appointed KB as general manager when AB left the company. As times became difficult the claimant came under more pressure to achieve his targets. His development within the company became negative and subsequently led to him finding out that KB was appointed general manager, he saw himself being kept out of the loop.

At his time two uncles, his Godfather, a cousin and his two younger brothers were let go. His father was suspended on allegations which turned out to be false and he has since been reinstated to managing director. He felt he was losing his support structure around him. He saw a pattern that anyone closely connected with the previous company had to go. He began to see himself as next and to suffer panic/anxiety attacks. He attended his GP and was on medication intermittently.

He had a meeting with KB in the early stages of his role and he explained to KB his worries about the decreasing family members, KB being appointed as general manager and that he was anxious about his own position. He sought clarity and direction within his role. KB said he would take on board what the claimant had said. It was not well known outside of the family that he was having personal difficulties at this time; however KB in HR was aware. KB drew up a job description for the claimant; however the claimant's work stress was not addressed.

On the 29th March KB called him into his office and reprimanded him for not turning up for work on the previous Saturday. KB was irate. The claimant normally worked Saturday but that Saturday he was not required. He explained to KB that he felt demotivated and that he was a target because of who he was. KB said he should have worked the Saturday as he was above him and should not have to do Saturdays for him. KB went on to say that if the claimant was not happy that he should consider his position and that he (KB) had chopped and changed throughout his career and it had done him no harm. The claimant got a chill as he thought his employer did not want him there. The end of this meeting was the lowest point he had with the respondent. His head was spinning while he returned to his duties. But he kept thinking that KB had put it to him that he would be better off elsewhere. He was not thinking straight and spoke to no one about his situation during the day. That evening he returned to KB's office and said to KB something along the lines of "I think your right I should resign as I

am only avoiding the inevitable". KB responded by accepting his resignation and requested it in writing. The claimant was stunned as he had only said it as he was looking for support or a reprieve from KB.

He left the office and met TD a director of the company, TD calmed him down and the claimant explained to him what had happened. TD assured him all would be fine as he could see the claimant's value to the company. He advised the claimant to take some time off. The claimant went to his GP who certified him sick for two weeks due to acute stress. He sent a text message to KB informing him that he was not available to work and arranged for his sick certs to be dropped in to the office.

On his return to work TD offered him a role of supervisor at a demolition in Offaly. TD told him he would speak with KB so KB was aware that he was working at this time. At this stage the conversation regarding his resignation was not on his mind. As the demolition project was in Offaly occasionally he had to stay overnight and the respondent paid his expenses.

He received communication through TD that KB wanted to meet with him. As he was reluctant to meet with KB on his own he asked TD to accompany him. It transpires that TD was asked not to attend as it would undermine KB authority. KB chose that KF from HR could attend and the claimant agreed to this.

At this meeting on the 21st April KB told the claimant that he should not be working with TD. The claimant responded by telling KB that TD was above him; however KB then informed him that he was also a director of the company. This was the first the claimant knew of this. KB informed the claimant that he would have to return to work in the depot. The claimant requested to see the company doctor report that stated he was unfit to work in the role of operations director in the depot. KB read this and told the claimant he would just have to continue sending in sick certs. The claimant also explained that he had not resigned.

The claimant went home and his mother informed him that she had signed for a letter for him. This letter was signed by KB stated that as he had resigned on the 29th March 2010 and his notice period had now expired, KB was accepting that he was no longer an employee of the respondents. The claimant was taken aback and thought that there was some mistake. He contacted TD and explained what was going on. He returned to work the following day to seek clarification from KB, as KB was tied up that morning the claimant continued on with his duties. He eventually met with KB who asked him why he was there, it was KB's view that the claimant had offered his resignation and he accepted it. The claimant was not getting any straight answers and he refused to leave. KB threatened him with security to remove him. KB left and then returned on his own and asked the claimant did you resign. The claimant replied in the negative and KB called him a liar.

The Tribunal decided that the onus is on the respondent to prove the dismissal was fair.

The hearing resumed on 19th April 2012.

The respondent conceded that the dismissal of the claimant was not in dispute and that they conceded that the claimant was unfairly dismissed. The Tribunal allowed time for the parties to agree loss. The parties could not agree. The Tribunal asked the parties to send in submissions regarding the claimant's loss.

Determination:

The respondent conceded that the claimant was unfairly dismissed the Tribunal having heard the evidence and having taken into account the extensive submissions of both parties makes the following determination:

The claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the Tribunal awards the claimant the sum of €8,008.40 as compensation as is just and equitable having regard to all the circumstances.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, succeeds and the Tribunal awards the claimant the sum of €1,270.00.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)