

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE - *claimant*

CASE NO.

RP87/2011

UD46/2011

MN58/2011

against

EMPLOYER 1 - *respondent 1*

EMPLOYER 2 - *respondent 2*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr. P. Casey
Mr J. Flavin

heard this claim at Cork on 14th June 2012

Representation:

Claimant(s) : In Person

Respondent(s) : Byrne Wallace, Solicitors, 88 Harcourt St, Dublin 2

The determination of the Tribunal was as follows:-

Dismissal was in dispute in this case.

The respondent has a chain of supermarkets. The claimant was employed as a sales assistant, packing shelves and tidying in one of the respondent's supermarket in Cork.. Things went well for him at first but this changed when a new manager came to work in the store. The claimant felt that he was doing more than his share of work and was bullied by the new manager.

On an instruction from Head Office the HR manager (HRM) met the employees in the store to inform them that the respondent intended introducing voluntary redundancies. She met the employees in small groups to inform them. The claimant was among those whom she met and informed on 23 February 2010. She went through the redundancy package with them. Applications had to be made by 10 March, 2010. She told anyone interested to come and talk

to her. A decision as to which applications would be successful would be made by 23/24 March 2010. She had no notes of the meeting. It was all done verbally. Of the eight applicants for redundancy five were successful.

There was a dispute as to whether the claimant indicated interest in the redundancy. His position was that he told HRM the following day that he was interested in the redundancy package and she said they “would see about it”. HRM denied that the claimant indicated any interest in the voluntary redundancy.

The claimant’s epilepsy caused him to be absent from work on a number of occasions. Having returned in late January 2010, following an absence from November 2009, he was absent again from 1 March 2010. HRM met him on 23 March 2010 and again on 27 April 2010 along with the store manager on the latter occasion, to discuss his absences. HRM’s evidence was that the claimant was agitated, distressed and crying at the 27 April meeting. He did not have representation at the meetings and had requested to bring a work colleague with him. If there had been a language difficulty he could have brought some one with him. Redundancy was not mentioned at either of those meeting, both of which post-dated the closing date for applications for redundancy.

The claimant accepted that he told HRM on 27 April that he was not sure if he was returning. The respondent was opening a new store and he and others were hoping that he might get work in it. When it was put to the claimant that it was not guaranteed that he would receive voluntary redundancy he replied that he thought he would when he told HRM he was interested. He was thinking of his health. He had problems with the new store manager where he had been working and would have changed stores.

The claimant ceased working for the respondent at the end of February 2010.

His epilepsy worsened because of the stress and lack of medication; he had five seizures in one month. He had no income whatsoever and was homeless for some time. His medication, when he could get it, was heavy. It was common case that the claimant called to the respondent numerous times asking for his P45. He needed it to get his Social Welfare payments and medication. The claimant maintained that he also asked about his redundancy during some of these visits to the respondent. Every time he asked for his P45 the respondent sought a letter from him to prove he was leaving and seeking his P45.

The respondent’s position was that claimant approached the assistant manager in early summer 2010 and told him that he would not be returning to work and wanted to resign his position. This manager did not discuss the redundancy package with him but told him if he wanted to resign he should put it in writing. He was not aware of the claimant’s health problem.

A young lady (YL), who had befriended the claimant, wrote a letter of resignation for him and he presented it to the respondent. This letter was dated 28 May 2010.

YL’s evidence was that she met the claimant in late 2009. When his epilepsy worsened she helped him with his general practitioner and with funds for medication. He confided in her that he was being bullied by a manager at work but did nothing about it, in case he would lose his job. She confirmed that she had attended some meetings with him seeking his P45 and that he asked about redundancy at one of these meetings. They requested the claimant’s P45 be sent to a new address but it never arrived. He eventually got his

45, having a date of cessation of 17 July 2010 from Revenue. The respondent maintained that this date was an accounting exercise.

The only reason he submitted a letter of resignation was to get his P45 to enable him to apply for social welfare payment. The respondent told him he could not get his P45 until he submitted a letter of resignation. The claimant accepted that he became angry on one occasion in the store and was asked to leave by security; he was distressed because of the manner in which he was being treated.

Determination

The whole thrust of the claimant's case was that he was entitled to redundancy. Without making a finding on the disputed fact as to whether the claimant had informed the respondent that he was interested in voluntary redundancy there is no evidence before the Tribunal, from either party, that the claimant was one of the five successful candidates for redundancy. The claim under the Redundancy Acts fails.

From the evidence it is clear that the employee was in a distressed and precarious position because of his epilepsy and his resulting financial position. YL gave him assistance. There was no evidence that the respondent, although a large employer, had an employee assistance programme which might have been of benefit to employees such as the claimant. However, his letter of 28 May 2010 stated, "I ... will not be returning to work due to long term epilepsy." Neither his P45 nor redundancy was mentioned in his letter. The Tribunal finds that that the letter can only be construed as a letter of resignation. Accordingly, as there was no dismissal the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail.

In light of this finding it was not necessary for the Tribunal to consider the respondent's submission that the claim under the Unfair Dismissals Acts had been lodged with the Tribunal outside the prescribed six-month statutory time limit for initiating a claim.

As the claimant resigned from his employment a claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 does not arise.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)