

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD788/2011

Against

EMPLOYER
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. O'Connor

Members: Mr G. Andrews
Ms H. Kelleher

heard this claim at Tralee on 26th October 2012, and 5th and 6th February 2013

Representation:

Claimant:

Respondent :
The determination of the Tribunal was as follows:

Respondent's Case

The respondent is a sole trader who operates a retail security service in the south west and employs around twenty staff. His office was based in one particular town but the claimant was based in a larger town in the same county. According to the director and owner of the business the claimant's contract of employment specified that he could be based at any of the locations where the respondent had a contract. The claimant who commenced work with the respondent in November 2006 as a static guard resided some thirty kilometres from where he was based and approximately forty kilometres from the office.

The owner told the Tribunal that by 2010 his business was taking a "hammering". He lost some entire contracts and security hours at the large retail centre where the claimant was based were cut back in early 2010 as that centre's main store reduced its opening times. In common with other employees that situation forced the respondent to shorten the claimant's working hours. He began notifying that reduction to him by letter in September. A similar letter issued by the director to the claimant in December 2010 informed him of a further reduction in his hours at that centre.

Prior to those letters the director met the claimant the previous August. Those meeting addressed the issues of holidays, timesheets, safety, and on at least one occasion wages. One of those meetings on 17 August was recorded by the claimant, despite the owner's objections. Subsequent to that meeting the claimant's hours were reduced but his rate of pay increased. Large sections of the

discussion between them on that occasion was presented to the respondent in a lengthy letter in early November and produced as evidence to the Tribunal. According to the witness he may have referred to a redundancy situation to the claimant during that meeting.

As the business fortunes of the respondent were not improving the owner decided to terminate the claimant's employment by way of redundancy early in 2011. He formally wrote to the claimant on that issue. The witness defended the redundancy decision stating it was based on clear, fair and objective grounds. He adopted the last-in, first out policy and denied selecting the claimant due to his demands for a pay rise. The owner also stated that the claimant declined alternative work in the town where the respondent's office was located. However, that last happened in June 2010 and the claimant had not been offered work there subsequent to August 2010.

The claimant was one of several employees that were made redundant in that period. The security contract did not terminate in February 2010 and other employees continued to provide services there as per that contract. The witness insisted that the claimant was not victimised post August 2010 and that there was a conscious or deliberate decision to exclude him from shifts which attracted premium payments. The owner attempted to share out hours at this retail centre fairly among his employees but was eventually forced to make some workers redundant. Documentation was produced to show the hours worked in that centre from early September 2010 to 2011.

Claimant's Case

Prior to commencing employment with the respondent in November 2006 the claimant had acquired security work experience in the United Kingdom and at a regional airport in Ireland. While abroad he secured a certificate of attendance at a two day induction course related to security duties. The claimant understood from a document sent to him subsequent to his commencement at this retail centre that he could be required to work at various locations *around the country*. On a number of occasions he performed security duties for the respondent in other locations within the county where he and the respondent were based. However, he was almost always based at this centre but was never told he was permanently based there. .

The claimant told the Tribunal that he had arranged with the respondent to take a month off for annual leave in July 2010 in anticipation of a major domestic event. Despite that arrangement being put in place months in advance the claimant was still rostered for work during some of that leave period. He met the owner twice in August when they discussed leave arrangements, time sheets, and pay. The claimant found the first meeting unsettling and inadvertently audio recorded the second meeting. He heard the owner tell him on the phone in late June 2010 that he would be sacked if he took that time off. He was unhappy at being "dragged" to the first meeting where he expected to be dismissed and felt his job was again threatened at the second encounter. He knew then he was for the "bullet" as the respondent clearly indicated that he could get a pay rise but would suffer a reduction in his overall remuneration as his hours would be reduced.

As expected and following those meeting the claimant's working hours were reduced. At that time he was the most experience employee at that centre. The claimant felt that other employees with less experience were given some of his reduced hours. Some of those employees were part time workers with the respondent. As part of his application for a pay increase the claimant contacted a State agency and reported his underpayment to that body. He believed he was unfairly selected for redundancy as a consequence of seeking that increase and that other employees were given preferential treatment regarding hours and continuity of employment contrary to his experience and length of service.

Determination

It is understandable that the claimant felt somewhat targeted and victimised by the respondent regarding his termination of employment. There is little doubt that the working relationship between him and the respondent suffered due to their several and ongoing conflicts. However, the Tribunal acknowledges that the respondent's business was contracting and that measures were needed to cut costs. As in many cases when this happens redundancies among the workforce can occur. This was no exception. Taking in all the factors of this case the Tribunal finds that the position which the claimant held was justifiably selected for redundancy. In that scenario the claimant therefore lost his job with the respondent.

Since termination of employment through redundancy is not an unfair dismissal it follows that the claim under the Unfair Dismissals Acts, 1977 to 2007 falls.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

