

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE – *claimant*

CASE NO.
UD2282/2011

Against

EMPLOYER – *respondent*
C
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr B. Kealy
Mr N. Dowling

heard this claim at Dublin on 17th April 2013

Representation:

Claimant(s): In person

Respondent(s): Company Director

The determination of the Tribunal was as follows:-

Background:

The respondent company has been put into liquidation. The Managing Director and Sales Manager of the company attended the Tribunal with letters of proxy from the Liquidator in order to give evidence.

The Managing Director has a fish processing business in Cork and branched out into retail units. He opened a retail unit in Dundrum in 2010 and Tallaght in February 2011. He brought a couple who were employees from Cork to start up the shops. The claimant was hired on 5th May 2010 to take over the managing of the Dundrum shop on their departure to the Tallaght shop. The shops closed for business at the end of December 2011.

Determination:

The Tribunal has carefully considered the evidence adduced. The claimant was notified on the 9th of July 2011 that his employment with the respondent company was being terminated. The respondent's witnesses gave evidence to the effect that the claimant was taken on in May 2010 to become manager of a retail outlet which this Cork based company had just opened in Dublin.

Initially the claimant trained under an experienced retail employee of the respondent company who had agreed to undertake the start-up phase of this new retail unit and who it was hoped would be able to bring the claimant up to the standards required of a manager

By February 2011 the claimant had been moved into the position of Manager with full responsibility for the day to day running of the shop including stocktaking, record taking, deliveries, managing staff etc.

Evidence from the respondent witnesses indicated that the claimant was not working out as a manager and that all efforts to get the claimant to improve were unsuccessful. There appears to have been issues with punctuality, hygiene, record keeping and general efficiencies.

It is clear to the Tribunal that the respondent believed that it had some very real issues with their newly employed manager. However, there was no systematic attempt to address the issues raised and the claimant gave evidence to the effect that he was doing everything that he could reasonably be expected to do in response to issues raised.

It is accepted by the Tribunal that the claimant did not know and could not have known that the process being engaged in was disciplinarian in nature which could and ultimately did end up with the termination of his employment.

On the 9th of July 2011 the claimant was notified that he was being let go. This came as a complete shock to the claimant who had never considered that the issues raised, and which he felt he was addressing, were sufficiently serious to warrant a dismissal.

It is common case that no formal and/or written warning, as provided for in the contract of employment, was ever given.

It is noted that the second witness for the respondent who oversaw the process was only present on the premises once a week for the duration of the employment.

On balance the Tribunal finds the dismissal to have been unfair and in the circumstances awards €8,320 (eight thousand, three hundred and twenty euro) being equal to 16 weeks' pay of €520.00 per week. In assessing loss the Tribunal took into account the fact that the company closed at the end of 2011 and the claimant found part-time employment from September 2011.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)