

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE *-claimant*

CASE NO.
UD624/2011
RP863/2011
MN669/2011
WT251/2011

Against

EMPLOYER *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Ryan

Members: Mr A. O'Mara
Mr J. Maher

heard this claim at Trim on 1st November 2012
and 5th February 2013

Representation:

Claimant: Mr. Richard Clinch, Seamus Maguire & Co, Solicitors, 10 Main Street,
Blanchardstown, Dublin 15

Respondent: Ms Rosemary Mallon B.L. instructed by,
Beale & Company, Solicitors, Hamilton House, 28 Fitzwilliam Place, Dublin 2

As dismissal is in dispute in this case it is up to the claimant to give evidence first.

Claimant's Case

The respondent is a large supermarket. The claimant was initially employed in May 2006 as an off-licence charge hand. After 7 months he was offered and accepted the position of trainee manager. As part of his training the claimant attended D.I.T to study retail management. In May 2008 the claimant was promoted to Store Manager with responsibility for the 50 staff on the shop floor, reporting directly to the respondent owners.

In October 2010 the claimant went on holidays for two weeks. On his return to Ireland he was

informed by the owner (SM) that there was an urgent meeting that he had to attend the following day (while he was still on holidays). At the meeting the claimant was informed by SM that the meeting was going to be tough but the claimant still 'had no idea what was coming.' SM informed the claimant that they could no longer afford to pay his wages. He was given two options; to be made redundant or to go on a 3-day week. The claimant was shocked as there had been no prior discussions regarding redundancy and as the claimant was aware of the sales figures he didn't believe it was a redundancy situation. The claimant said he wanted some time to make the decision and to take some advice; SM told the claimant that he had to make the decision immediately.

The claimant returned to work and worked a full week as normal. A full week consisted of a 6-day week as opposed to the 5-day week the contract states. The roster for the following week was changed to a 3-day week which continued. Approximately 2 weeks later the claimant met with the respondent's accountant. He said that he could not afford to only work 3 days and would like to take the option of redundancy instead. The claimant had the RP9 notice to claim redundancy with him which was signed by the accountant. The claimant completed Part B of the RP9 form on the 1st of November; when he first went on short-time. The accountant approximately 3 weeks later told him it was a mistake to sign the RP9 form.

The following day SM approached the claimant on the shop floor and threatened the claimant saying, 'if you take any legal action we'll destroy you, we know everyone in retail.' The other managers were also ignoring the claimant. The claimant felt threatened but did not file a grievance. He did have the employee handbook and a contract of employment. The claimant continued to work until the end of the week then left the company on the 13th of December 2010. The claimant maintains that he did not resign and felt that he was dismissed. The claimant verbally told the respondent that he would not be returning to work and that it would be his last week. The claimant attended an interview for a new position with a new employer in November 2010. He had secured the position when he left the employment of the respondent.

The claimant gave evidence of loss and his attempts to mitigate his loss.

The claimant disputes informing the respondent that he was resigning; he did not inform them at a meeting in the cash office and did not hand them a letter saying he was resigning. He did not inform any other staff members (check-out staff) that he was resigning or that he was unhappy in his employment. The claimant disputes that he wrote or signed the resignation letter provided to the Tribunal by the respondent. The claimant disputes that he was a trainee manager and that he reported to another manager. He disputes that the other manager's hours had also been reduced.

A witness for the claimant said he overheard a conversation where SM said to the claimant, 'if you sue I'm going to destroy you.'

Respondent's Case

The company owner that employed the claimant directly after the respondent gave evidence. He interviewed the claimant in November 2010 for the position of store manager in a new shop he was opening. The claimant was successful and commenced employment a week before the shop opened on the 18th of December 2010.

The respondent accountant (bookkeeper) VB gave evidence. All of the respondent Directors took a pay cut and all of the staff hours were reduced due to the trading conditions at the time. The respondent revenue had decreased by €1 million from 2009. VB described the claimant's final payslip of the 17th December 2010 as including holidays and two weeks notice; the 6 days notice was worked in one week as he wanted to start his new job. When the claimant first started on a 3-day week his wages were calculated at €240.00 instead of €420.00; after this was discovered he was back paid the difference in wages for the 4 weeks.

The claimant asked VB to complete the RP9 on the 1st of November 2010. VB signed the RP9 on the 1st of November 2010 but the claimant only returned and signed the RP9 after he handed in his notice. VB explained to the claimant that he was not entitled to redundancy as he had resigned from the respondent to take up new employment. VB had never seen a RP9 before this and had assumed it was a Social Welfare document.

The respondent owner SM gave evidence. The respondent business decreased significantly from 2009 to 2010. The Directors took a pay reduction in April 2009 and all staff hours were reduced. The claimant was a trainee manager. He had a contract of employment and an employee handbook both of which contained a grievance procedure and the policy to enable the respondent to reduce hours or put staff on lay-off.

SM met with the claimant and gave him notice that he was being put on a 3-day week; SM never offered the claimant redundancy as they did not want to lose him. The claimant had been kept on full-time hours longer than any other staff as he was integral to the business. The conversation happened before the claimant went on holidays. The claimant was upset but a 3-day week was necessary, SM was aware that the claimant was under financial pressure.

SM disputes ever saying, 'if you sue I'm going to destroy you', or ever shouting at the claimant. The claimant called SM into the office where the other director MM was also present. He handed MM a resignation letter and said that he had secured another job so had to go. The claimant worked out his 2 weeks notice in one week leaving the respondent employment as of the 11th of December 2010. The claimant was a good worker; both SM and the claimant were sorry that he was leaving his employment. The first time the claimant mentioned redundancy was after he had handed in his notice.

MM gave evidence that she was shocked when the claimant resigned. He handed her the resignation letter and said that he had got another job; he never said he felt threatened in any way. MM's relationship with the claimant did not alter after he resigned.

AS, a supervisor was in the cash office, was present when the claimant came in and handed MM a letter and said he was resigning from his employment. The claimant later approached AS and said he had handed in his notice as he had a new job. The claimant never said there was any 'bad reasons' for leaving his job.

A trainee manager (WM) gave evidence that after the claimant came out of the cash office meeting he told him that he had handed in his notice. The claimant told WM that he was only working 24hrs and wasn't happy so he got a better job. The claimant never said he felt threatened. WM's hours had been reduced long before the claimant's had.

A number of other staff members gave evidence that the claimant told them he had handed in his notice as he had gotten a better job.

Determination

The Tribunal are satisfied that the claimant resigned from his employment as he had secured alternative employment. He had attended the interview in November 2010 and when he discovered he was successful he resigned from the respondent and worked his notice. At no stage did the claimant make a complaint under the respondent's grievance procedures which he was in possession of. In addition, the claimant was not entitled to and did not satisfy the requirements to serve an RP9, notice to claim redundancy, on the respondent.

Consequently the claims under the Unfair Dismissals Acts, 1977 to 2007, Redundancy Payments Acts, 1967 to 2007, Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 all fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)