

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

MN883/2006  
UD1334/2006

against

Employer

under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr. M. Forde  
Ms H. Kelleher

heard this claim at Cork on 9th January 2008

Representation:  
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Claimant :

Mr Ken O'Sullivan, B.L., instructed by Patrick J. O'Shea & Co., Solicitors,  
77 Main Street, Midleton, Co. Cork

Respondent :

Ms Karen O'Driscoll, B.L., instructed by O'Flynn Exhams & Partners,  
Solicitors, 58 South Mall, Cork

The determination of the Tribunal was as follows:-

#### **Respondent's case:**

The respondent's business consisted of an eighteen hole golf course and a small hotel. The business expanded over the years from its construction in 1993/94 to 2002 when they were told that the NRA were considering routing the new road N28 through the property. No new members were taken in after that and it was decided to build up the business in the hotel, bar and leisure centre. In 2004 the NRA confirmed the respondents property as being the chosen route for the new road and that notices would issue in September 2005. In 2004 the hotel increased in size from eighteen to forty rooms. In August 2005 the leisure centre opened for business and this was to make up for the

loss of the golf course.

The claimant commenced his employment in July 2005 as leisure centre manager. The use of the leisure centre was free to hotel residents and non-residents paid on a daily basis. The claimant introduced a voucher system to build up the business for the leisure centre. The rate varied from €7.50 to €9.50 depending on use of the vouchers at peak or off-peak periods and the claimant sold the vouchers at a discounted rate of €3.50 for use at peak periods. The claimant requested that more equipment be bought for the centre. When the claimant requested an increase from his original salary of €600 per week it was suggested that he carry out the health assessments on his own time and to keep the money from these assessments. His salary was increased to €800 per week in March 2006 as he was needed in the employment. The claimant was travelling a lot to the U.K. and it was felt that he would go back there at some stage.

In 2005 the respondent invested heavily in new management, i.e. hotel manager, marketing manager and clubhouse manager, however the business did not take off and the leisure centre was losing money. The claimant was aware of the financial difficulties but not the overall detail. It was thought that the claimant would get more people in to the leisure centre but this did not happen. In June 2005 the losses amounted to €300K and in July/August 2006 the losses amounted to €600K including €70/80K which was attributed to the leisure centre. The losses were down to €280K in 2007. A letter dated 29<sup>th</sup> July 2006 was sent to the claimant questioning the vouchers and the money gained from the health assessments. As at the date of this hearing negotiations were ongoing with the NRA's agents as to the amount of their claim for loss of business. In September 2006 they did not have any bookings and it was felt they would have to close. The claimant said at that time that he was going on two weeks holidays and it was the intention of witness to discuss the matter with him. It was assumed that the claimant was going home to the U.K for his holidays. When witness went to the leisure centre during the second week of the claimant's holidays he was told he was taking a third week. Witness was concerned because of the financial situation and he rang the claimant in the U.K. telling him that things were bad and if he could get another job to do so. He spent a lot of time in the U.K. and it was thought that if he got a job there it would make things easier. The claimant returned after the three weeks and he was told he would be paid for the weekend to try and get another job. Witness never saw the claimant after that. Prior to March '06 and his getting an increase in salary the claimant indicated that he would get a job in the U.K. The claimant had a sick child in the U.K. and he was told there was no problem when he needed to go there and he was paid by the respondent.

After the claimant left the respondent did not know how many vouchers had been issued and they kept the leisure centre open as a lot of vouchers were coming in and they were not in a position to buy them back. There was no allegation of impropriety. The claimant was not replaced. There is one full time employee with two to three part-timers at weekends and there is only one person there at any one time. Two to three weeks after the claimant left the fire officer visited the premises and to meet the required standards in the weights area the respondent would have to spend €50/60K.

### **Claimant's case:**

The claimant was manager of the leisure centre from July 2005 to September 2006. His duties were to set up the leisure centre, train the staff and operate a safe environment for the leisure centre users. He has a long background in this business. He did not receive terms and conditions of employment. His brief was to supply leisure services for the hotel users and it would be a bonus to being in income from the public. When the claimant took over the leisure centre was not properly equipped and this was rectified when he spoke to the director. It was agreed that he needed to get

membership and in the week before he left for his holidays the director asked him to design a plunge pool and source an additional facility for the leisure centre. Membership would be the core product for selling the business and both the director and his son were in agreement. It was agreed to have the swimming pool adjusted to attract families. The claimant dealt a lot with the director's son and he was very positive about the way forward for the business. The director was away a lot of the time.

The claimant was in a position to generate some income through the voucher system. He discussed the pricing system for the vouchers with the director and he was happy for the claimant to proceed as they had discussed. When the vouchers were bought in packs of one hundred they were sold at a lower rate. The claimant was not aware of the overall financial condition of the business, he only ran the leisure centre as best he could. All the vouchers were logged in a book and they all had serial numbers except for a small batch which were not numbered by the printers and he told the staff to only use this batch if they were stuck. If the respondent had looked in the voucher logbook he would have been aware of how many were used. His weekly working hours were thirty-nine when he took over initially but he worked slightly more and worked most of the public holidays. 50-60% of the hours he worked on Monday and Tuesday due to non-availability of staff.

His salary was €30K initially and it was agreed that once the numbers came through the door that he would get an increase. This agreement was not in writing. Following his approach to the director to discuss his salary he was given an increase to €40K per annum. He did not take any time off apart from statutory holidays. He discussed his holidays with the director and his son and because his mother and daughter were ill he asked to take fourteen days over a three-week period. No objection was raised once the place was covered. There was no discussion that his job was in danger. A leisure centre is traditionally quiet in the Summer but a lot of the residents were using the facilities. The director had said that the hotel was busy and there would normally be better membership sales in the Autumn. He felt that the relationship between himself and the director deteriorated when prior to his going on holidays, he said he had no training in hotel management but would be willing to help out when the question was posed by the director, as to whether he would get involved in the hotel management side of the business.

On 9<sup>th</sup> September 2006 while on holidays he received a call from the director which was brief and abrupt. He was told the leisure centre was closing in three weeks time and there would be no more work for him on his return. The call was cut off and when he tried to return the call he left a voice message stating he would be at work as planned on 18<sup>th</sup> September. This call was totally out of the blue and a surprise to hear the leisure centre was closing. Prior to his holidays the one hundred packs of the vouchers were still being sold and the director was fully aware of this. He was not told to look for work in the U.K. He returned to work as scheduled on 18<sup>th</sup> September and on meeting the life guard he enquired if he had heard that the leisure centre was closing. The life guard had heard nothing and he told the claimant that the packs of vouchers were being sold while he was on holidays. Even if it were closing in three weeks the claimant felt he would be part of the team to run the leisure centre during this period. He was told by the director that the centre was closing in three weeks time and he had no choice in the matter. He contacted staff to be told that the vouchers were still being sold and the leisure centre did not close in three weeks as he had said. His performance was never criticised, in fact he was praised for the way he ran the leisure centre. Other areas of the business would not be discussed with the claimant. Notice of his termination of employment was not given in writing other than a piece of paper to bring to Social Welfare to say "down turn in business".

**Determination:**

Based on the evidence the Tribunal was of the opinion that the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 fails due to payments made. The Tribunal also finds that the dismissal was not unfair therefore the claim under the Unfair Dismissals Acts, 1977 to 2001 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

