

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD685/2006
MN454/2006

against

Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. F. Cunneen
Ms. M. Maher

heard these claims in Dublin on 16th February 2007.

Representation:

Claimant: Mr. Oisín Quinn B.L. instructed by Ms Emer Kilvarry of Mason Hayes & Curran, Solicitors, South Bank House, Barrow House, Dublin 4.

Respondent: Mr. Roddy Horan S.C. instructed by Mr Michael Nudung of Denis I. Finn, Solicitors, 5 Lower Hatch Street, Dublin 2

Preliminary Determination

The determination of the Tribunal was as follows:

The legal representative for the respondent raised a preliminary issue by requesting that this case be adjourned generally until the High Court has dealt with the matters relating to this claim. He explained that two brothers owned the respondent company, one subsequently bought out the other.

The claimant is the nephew of the present owner and the son of the former joint owner. Because the brothers worked together amicably no due diligence checks were done at the time of the buy out in November 2005.

The claimant was not happy about the sale. On 17th January 2006, the claimant made a claim for €178,000 commission entitlement. This claim came out of the blue. The claimant was already paid €88, 000 per annum, with bonus. The respondent conducted a search of the files and discovered two documents dated 26th March 2004. These documents are agreements between the

claimant and his father. The agreements would more than double the claimant's salary and extinguish the profits of the respondent. The agreements were not seen by the auditors, neither were they mentioned at Board meetings. Neither the respondent's HR department nor members of management had seen the agreements. They were concealed. The claimant and the respondent are both seeking redress in the High Court; the claimant under the contentious agreement for commission owed and the respondent is seeking repayment of certain payments to which they claim the claimant had no entitlement.

The vitality of the contract, explained the legal representative, is a matter for the High Court. The reasons for dismissal relate to the documents. The efficacy of the documents is central. As both actions are interrelated the Tribunal should defer to the High Court.

Legal representative for the claimant objected to the request to adjourn the hearing. It was not claimed that the respondent would be prejudiced by the case being heard. The claimant would be prejudiced if the case was adjourned but an adjournment would advantage the company.

A case for unfair dismissal can go ahead while other claims are being pursued. The respondent did not question the jurisdiction of the Tribunal to hear the case. The claimant was dismissed because the respondent claims the contract is a forgery. The assumption is that the dismissal is unfair; the onus is on the respondent to satisfy the Tribunal that the dismissal was fair.

Determination

After carefully considering the arguments from both parties the Tribunal noted that proceedings were only issued in the last week and the claimant would be prejudiced by the adjournment. It is common case that the Tribunal had jurisdiction to hear this claim. Therefore the Tribunal by majority decision, has decided to hear this claim. The claim before the Tribunal is one of unfair dismissal. The Unfair Dismissals Acts, 1977 to 2001 are to be applied. The respondent has to show that the claimant was properly dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)