

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD1347/2006, WT416.2006

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Hayes

Members: Mr R. Murphy
Mr P. Trehy

heard this claim at Dublin on 16th July 2007

Representation:

Claimant : In person

Respondent : XXXX

The Tribunal is satisfied that the claimant's date of termination with the respondent was 15 December 2006. Accordingly his application under the Unfair Dismissals Acts, 1977 to 2001 was submitted on time within the terms of those Acts.

At the outset of the hearing the respondent conceded the appeal under the Organisation of Working Time Act, 1997.

The determination of the Tribunal was as follows

Respondent's Case

The former group managing director accepted he was not directly involved in the day-to-day running of the respondent. He explained that the claimant's dismissal was for reasons of work performance and related directly to his selling ability. The claimant was employed as a business development consultant and in addition to that role the claimant also attended significantly to administrative duties. It was the witness's understanding that the claimant was not prepared to undertake a sales role. The respondent needed a full time sales position and concluded that such a position did not suit the claimant. As a result a decision was made to "let him go".

Claimant's Case

The claimant commenced employment with the respondent as a business development consultant. Two weeks into that role his manger told him he could also undertake administrative tasks. Sales then became a fraction of his work but to state that a sales role did not suit him was “far from the truth”. The claimant was called into an office on 1 June 2006 and in the presence of the group managing director and his own manager and informed that due to financial reasons he “had to go”. There was no notice or suggestion that such a development was coming. His own manager told him that he did not know in advance of that news. The witness said that the first time he heard of the work performance reason for his dismissal was at this hearing.

Determination

It is clear that the claimant’s dismissal was not the result of the respondent’s trading and commercial position. The witness for the respondent announced that his dismissal was due to work issues. There was no evidence that the respondent brought this to the claimant’s attention during the course of his employment with them. The respondent’s decision to dismiss the claimant was unfair as it denied natural justice to the claimant. The claimant was not notified of the respondent’s concerns about his work performance or given an opportunity to address those concerns. Accordingly his claim under the Unfair Dismissal Acts, 1977 to 2001 succeeds and the Tribunal awards him €5,000.00 as compensation under those Acts.

The appeal under the Organisation of Working Time Act, 1997 is allowed and the appellant is awarded €1,200.00 as compensation for outstanding leave under that Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

