

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

UD1172/2006

against

MN769/2006

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: Mrs. M. Quinlan

Members: Mr. C. Ormond  
Mr. G. Whyte

heard this claim at Dublin on 19 June and 5 November 2007

#### **Representation:**

Claimant:

Ms. Kiwana Ennis B.L., instructed by Mr. David O'Riordan,  
Sherwin O'Riordan, Solicitors, 64 Waterloo Road, Ballsbridge, Dublin 4

Respondent:

Ms. Deirdre Gavin, IBEC, Confederation House,  
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

The respondent employed the claimant as a credit controller from 10 January 2001. He later became credit control manager. Three credit controllers and an invoicing clerk reported to the claimant. A position of customer relationship manager (CR) was created during the summer of 2005 to work alongside the claimant. CR resigned in May 2006 and was not replaced. The claimant had a written contract of employment with terms and conditions including grievance and disciplinary procedures.

The claimant's employment was uneventful until 13 February 2006 when he received a letter from the managing director (MD) of the respondent requiring him to attend a disciplinary hearing into his failure to meet business targets. The disciplinary hearing took place on 20 February 2006 and

was attended by MD, the then finance director (TFD), the human resource manager (HR) the claimant and CR who accompanied him. Later on 20 February 2006, following this hearing the claimant was issued with written confirmation of a verbal warning of six-months duration for underperformance. The claimant unsuccessfully appealed against this warning to the group-managing director (GMD) in England. No further disciplinary action was taken against the claimant and his targets were met.

Some time in the spring of 2006 TFD left the respondent and was replaced by the current finance director (CFD). On 10 July 2006 CFD sent a memorandum to MD in which he gave an overview of the finance department. In this memorandum CFD referred to having to micro-manage the credit control and billing team in order to achieve targets. He then stated that a review of the credit control and billing team was required. At a board meeting in England on 20 July 2006 it was stated that the business continued to grow at 35% per annum. It was agreed at this meeting to amalgamate the positions of credit control manager and customer relationship manager into one new role of commercial manager (CM). MD and CFD were given three options to fill the new position; review the claimant's competencies against the new role, review other in-house candidates or source candidates externally. In a recommendation of 27 July 2006 from MD and CFD it was agreed that, whilst the claimant was in the natural position to consider for promotion to the new, more senior, position as CM, he had not gained the required experience for the new job and a broad ranging training program would be required to address the issue. No other internal candidates were considered suitable.

At a meeting on 8 August 2006 attended by MD, CFD, HR and the claimant the restructuring of the credit control and billing department was put to the claimant. He was told that his current position was redundant and given various options; apply for the new position as CM, apply for a more junior position as credit control supervisor (CCS), consider other areas of the respondent for redeployment or he could take redundancy package. The claimant was told that the respondent felt there were no suitable redeployment positions for him. It was pointed out to him that to take a position as CCS would involve a drop in pay. The claimant was given two days to consider his options. In the event he was certified sick for two weeks.

On 24 August 2006 the claimant met MD, CFD and HR to discuss the claimant's future. The claimant's position was that he felt he would not be successful as CM and that the respondent no longer wanted him to work for them. This meeting reconvened on 25 August 2006. It was confirmed at this meeting that the verbal warning had now expired. The claimant was given four weeks' notice of redundancy. His employment terminated on 22 September 2006.

**Determination:**

Having considered all the evidence in this case the Tribunal is satisfied, by majority, that the re-organisation of the credit control and billing department resulted in the claimant's position ceasing to exist. In those circumstances the majority is satisfied that a genuine redundancy situation existed and accordingly the claim under the Unfair Dismissals Acts, 1977 to 2001 must fail. The evidence having shown that the claimant received the requisite notice of termination the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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