

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee  
MN678/2007

UD854/2007

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: Ms. M. Levey

Members: Mr. R. Prole  
Mr. P. Woods

heard this claim at Dublin on 1st February 2008

#### **Representation:**

Claimant: Ms. Pauline Codd B.L.

Instructed by: Murphys Solicitors, Mount Clarence House, 91 Upper Georges Street  
Dun Laoghaire, Co. Dublin

Respondent: In person

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

The Claimant gave evidence that, as no T2 was received, he was unaware that the dismissal was in dispute until now. He was dismissed on 24 July 2007, and prior to this there had been ongoing difficulties in getting paid on time, and he often had to wait several weeks before being paid. Also his CIF pension was never paid. At the beginning he had got on well with the Respondent, but towards the end the relationship had deteriorated. Initially, he was paid by internet banking, but as the Respondent had problems with this, the Claimant agreed to have money lodged into his account by cheque. The Respondent had also offered to pay him by cash on occasion, but he had refused this offer. He said that it had been agreed that he would get a raise, but when he asked for it the Respondent said he couldn't afford to pay it. In addition, he only received two bonuses instead of the four agreed. He then said that if he did not get his increase or bonus he would have to cease his foreman duties and revert to being an ordinary carpenter.

The day before his dismissal he had slept it out and missed going into work, which was out of character. He tried to contact the Respondent but was unable to do so until 5 o'clock that day. The

following day the Respondent asked him why he had not appeared the previous day and said to him "its not working out". The Claimant then asked the Respondent was he letting him go, sacking him or making him redundant. The Respondent said no. The Claimant then said to the Respondent to let him go, make him redundant, or sack him, so the Respondent answered by saying " ok you're sacked". The Claimant said he was pressurised into this position by the Respondent. There was no doubt that he was dismissed. He subsequently went into business for himself in August 2007, but was only earning an average of €266.00 per week. However, he was optimistic about the future of the business. The remedy sought by The Claimant was compensation.

**Respondent's case:**

The Respondent gave evidence that his business had lost €37,000.00 last year, mostly due to monies owed to him for jobs done, and that the Claimant was aware of this. He said he may have been late, on some occasions, in paying the Claimant his weekly pay, but he always paid him soon after. He agreed that the Claimant was a very good worker and he regretted him leaving, however he could not afford to pay him the money he was seeking.

On the day the Claimant left, he asked the Respondent if he was making him redundant, sacking him, or letting him go. The Respondent answered no, but that he could not afford to pay him any extra money or bonuses. He said that he did not sack the Claimant. The Respondent said that the Claimant stated "so sack me", and The Respondent replied if that was the way he wanted it, so be it. The Respondent states that the Claimant chose to go, that he was not dismissed.

The determination of the Tribunal was as follows:

**Determination:**

On the basis of the evidence given by both sides, the Tribunal finds that the Claimant was aware that the raise negotiated, and the bonus agreed upon, were not now realistic in the context of the downturn in the business.

The reality of the situation was (and the Claimant was aware of this) that the financial situation of the company would not permit such a raise. The evidence indicated that under such circumstances the employee intended to leave and this is borne out by his request to the employer to let him go, make him redundant or sack him. The employer merely acquiesced to this request and under these circumstances the dismissal was not unfair.

Therefore, his claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

In addition, his 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)

