

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:  
Employee

CASE NO.  
UD619/2008

MN553/2008

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: Mr. D. Hayes B.L.

Members: Mr. D. Winston  
Mr. B. Byrne

heard this claim at Dublin on 6th October 2008.

Representation:

Claimant: Mr. Brendan O'Hanlon, Mandate Trade Union, O'Lehane House,  
9 Cavendish Row, Dublin 1

Respondent: XXXX

The determination of the Tribunal was as follows:

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 was withdrawn.

The fact of dismissal was not in dispute.

**Respondent's Case**

The managing director of the respondent company gave evidence. The company was experiencing cash flow problems. The claimant had been the operations manager and he was aware of the difficulties. A decision had to be made. Either a director or the operations manager would be made redundant. It was a hard decision, but the operations manager was a complete overhead, none of his time was billed to clients.

Cash flow was a problem because they had lost two small accounts. Also the industry became regulated and there were significant costs to the respondent in achieving compliance.

The claimant had gone on a training course to qualify as a trainer. However the company has not diversified into that area of business.

The managing director spoke to the claimant about the 7<sup>th</sup> April 2008. He had just returned from holidays. She told him he was being made redundant and would be paid statutory redundancy together with an ex gratia payment. He demanded much more. He has not been replaced and his work is currently shared between the two directors.

### **Claimant's Case**

The claimant gave evidence. He started working for the respondent in the summer of 03. The managing director was under pressure. He dealt with difficult clients and kept his finger on the pulse of the business.

He and the managing director occasionally had words. On the day he was dismissed, the managing director came and asked him what he was doing. Then she said to him, 'I want you out'. No alternatives were discussed. He had had no concerns about his position. The business did lose some small accounts and did have to comply with regulations. However when the managing director went on holidays she left him in charge and was satisfied with his efforts.

The claimant established loss.

### **Determination:**

The claimant was employed as the company's operations manager. The respondent provides security services mostly to retail businesses. Demand for the respondent's services fell by about 15%. The Tribunal was told, on the respondent's behalf that, due to the downturn in business, it was required to cut overheads. The respondent was also suffering cashflow difficulties. It was decided that the operations manager was the position to be made redundant because that position was a 100% overhead in that its services could not be charged to clients. No other position was looked at and nor did the respondent examine any other methods to make the required savings. Short-time and lay-off were not realistically considered. The claimant was given no notice of the respondent's severe financial difficulties or of his impending redundancy. Consideration was not given to offering the claimant alternative employment within the company, although it was accepted by the respondent that he could easily have worked as a security guard. The Tribunal is satisfied that the claimant was unfairly dismissed by reason of the procedures used to dismiss him and due to the manner of his selection.

Taking account of the money already paid by way of redundancy, the Tribunal is satisfied that compensation in the amount of €3,500.00 is just and equitable in the circumstances and accordingly makes this award pursuant to the provisions of the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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