

## **EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

Employee

UD323/2008  
WT155/2008  
RP258/2008  
MN297/2008

against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001  
ORGANISATION OF WORKING TIME ACT, 1997  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003  
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Mr. P. Casey  
Mr J. McDonnell

heard this claim at Cork on 13th October 2008  
and 15<sup>th</sup> December 2008

Representation:

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Claimant :

Mr Donal O'Sullivan, B.L., instructed by Mr Eamonn Fleming,  
Fleming & Barrett, Solicitors, 66a South Main Street,  
Bandon, Co Cork

Respondent :

Mr David Pearson, G.J. Moloney, Solicitors, City Quarter,  
Lapps Quay, Cork

The determination of the Tribunal was as follows:-

On behalf of the respondent evidence was given by DM. DM was employed by Promec Limited who are business consultants who had been doing work for the respondent ("BWM") for sometime. He was asked to do a review of the finance department of "BWM" from the Financial Controller down, which he carried out in the first week of November 2007. He described his methodology and

his findings. The structure of the department comprised four Financial Accountants (including the Claimant), who reported to a Financial Controller, who in turn reported to a Financial Director. He referred to the Respondent as the "Office Manager".

The report recommended re-structuring of the Finance Department into three lines of control where there had formerly been four lines of control. Under the re-structuring the "Office Manager's" role would be reduced to four days work per month. Consequently, the report recommended that the Office Manager position be made redundant. He acknowledged that the person filling the Office Manager's role (the Claimant) was the most senior of the accounting staff with 20 years service, but he indicated that he felt that "people were not relevant to the methodology". He acknowledged that the Claimant had previously done all aspects of financial control in the business and indicated that the conclusions were based on his investigation which included a 40 minute interview with the Claimant. He indicated that the title of Office Manager had effectively been given to him by the Financial Controller and conceded that the Claimant may well have used the title "Assistant Financial Controller (Administration)". In any event he was satisfied that for efficiency in the finance department that this position should be made redundant.

He indicated that there had previously been redundancies in other departments.

Evidence was given by the Finance Director of "BWM". He said that Promec carried out an exercise on the finance department in November 2007 at his request and that they had previously looked at other departments. The reports had previously given rise to other middle management redundancies across the Company. He received the Promec report on the 7<sup>th</sup> of December which recommended that the Claimant's role be made redundant. He decided to take action immediately and relied on the Promec report in the making of that decision. He said that though some of the other department members had shorter service than the Claimant nonetheless loss of those people would have compromised the Finance Department. He felt that there was no other suitable role for the Claimant. He said that he had not anticipated the recommendation that Promec would make, but decided that it was correct for him to act upon it. The report had also been given to the Directors and he had been directed by the Board of Directors to act upon the Promec recommendations.

On the 3<sup>rd</sup> of January he had a meeting with the Claimant and told him of the Company's decision to make his position redundant. He told the Claimant that they would give him an ex-gratia payment in addition to his statutory entitlements, and same would amount to approximately €47,832.00 which would amount to approximately double his statutory entitlements. He received an e-mail however from the Claimant indicating that he was not accepting the redundancy situation and because of this they ultimately only gave him statutory redundancy. He wrote to the Claimant on the following day confirming the position and advising him that his notice period would terminate on the 29<sup>th</sup> of February 2008.

He agreed that there may have been something of a personality clash between the Financial Controller of the Company and the Claimant. He acknowledged that the disagreements between them had necessitated his own intervention but he described the events as "handbags being thrown". He furthermore referred to a letter of the 13<sup>th</sup> of September 2007, from the Financial Controller to him in which the Financial Controller said that she felt that her relationship with the claimant was "untenable" and he said after consulting with IBEC and with the Claimant we felt that the parties could move on and work together.

He himself always got on well with the Claimant and said that his redundancy had nothing to do

with his relationship with the Financial Controller. He said that he was a dedicated employee and his integrity was never in question. He acknowledged that the Claimant was the second most expensive staff member in the Department but said that salary was not a consideration in the redundancy. Ultimately he requested by e-mail that the Claimant take whatever holidays he was entitled to during the course of his notice period.

The Claimant gave evidence on his own behalf saying that he is a certified Public Accountant and he joined the BWM in July 1988. He worked as a Financial Accountant responsible for the Company's mail order business, and the Dublin shop initially. He was always based in Blarney where the Finance Department was located. He felt that he always got on very well in his job. He was trusted by staff and directors and was made a cheque signatory quite early in his career. He said that there were many tasks to be performed in the business and at one time or another he had done every role within the Department. He had comprehensive experience in the business. He initially worked under a different Finance Director with whom he got on very well. The current Finance Director took over in 2000 and he had a good relationship with him also. At that time another Financial Controller occupied that position but he left in 2006. The present Financial Controller took up her position on the 16<sup>th</sup> of January 2007. He said that he felt that his work was always highly regarded.

He initially got on well with the new Financial Controller and he wanted to have a good relationship with her. He was her second in command but as time went on he found that he and she were not getting on well. He felt that she wasn't willing to learn operations and that she talked down to him. There were a number of incidents where he felt the quality of his work had been unfairly criticized by her in front of other staff. When the Financial Controller wrote the letter of the 13<sup>th</sup> of September 2007 he was very concerned. He was called to the office of the Chief Executive who indicated that she did not want the situation to continue and she asked him to speak to the Financial Director about resolving the matter. The Financial Director said that he would intervene in the matter and would put a plan together to move forward. He met the Financial Director over the next 3-4 weeks but the Financial Director left matters drift.

He recalled the Promec Representative coming in. At that time he was the most senior and expensive person in the department other than the Financial Controller.

He met with the Financial Controller and the Financial Director on the 3<sup>rd</sup> of January and he was told that his position was being made redundant on the recommendation of Promec. They said that they would give him the same terms that store staff who were laid off got but he felt that this was not acceptable. He felt that the real reasons for his removal were his poor relationship with the Financial Controller and his connections with a previous ownership regime that existed prior to the present Chief Executive coming to power. The meeting at which he was advised of the redundancy did not last long and they told him that they would give him an ex- gratia payment in addition to his statutory entitlements and this would amount to €47,500.00.

With regard to the Promec report he said that he was interviewed for about 20 minutes by DM who is an Engineer and has no financial background that he was aware of. He said that much of the discussion related to matters unconnected with the business. He said that a list of his duties which were prepared the previous March was relied on by Promec in coming to their conclusions and that at the interview all that he was really asked to do was to breakdown his time usage. He felt that he had been set up and the Promec Report was not genuine and was undertaken for the purpose of removing him.

He felt that whatever he said in that interview was going to be used against him and that all of his difficulties in reality related to his poor relationship with the present Financial Controller and his strong connections with the old ownership regime. He never regarded himself or was ever referred to as the Office Manager and that term in the context of his redundancy was novel to him. He reiterated that as far as he was concerned the Company had decided to get rid of him before the Promec report was ever prepared.

He knew that because of his age and the state of the economy that he would find it difficult to get another job and had devoted his life to BWM. He felt that there was no real redundancy and advised the Managing Director that he would challenge the redundancy. He was given 8 weeks notice to expire on the 29<sup>th</sup> of February but then the Company insisted that he take holidays during that period. He didn't want to do this as it was an inconvenient time of the year to take holidays having regard to the fact that his children were in school, he felt however compelled to take 9 days holidays before his notice expired. There was no celebration or party, which would be the norm in the Company to mark his departure.

Once he was made redundant he immediately commenced looking for other employment. He ultimately got a job on the 20<sup>th</sup> of May 2008 at a gross salary of €865.00 per week. In the interim he was on unemployment benefit. He has two children aged 16 and 14 and the youngest has special needs and because of this he required a certain amount of flexibility with start times and this was not practical for every employer and this also handicapped him in getting employment more quickly.

## **Determination**

Having considered the evidence and a series of e-mails and correspondence handed in by the parties the Tribunal finds that there was clearly a personality difficulty between the Claimant and the Financial Controller. This is evidenced by the e-mails and particularly by the letter of the 13<sup>th</sup> of September 2007 where the Financial Controller advises the Financial Director that her relationship with the Claimant is "untenable".

From that time on matters proceeded hastily and though the Financial Director indicated to the Claimant that he would take steps to resolve what he described as "throwing handbags" no steps in fact were taken to resolve the difficulties between the two parties. Instead Promec was introduced and a report was prepared recommending that the position of "Office Manager" be made redundant.

The Claimant was not known as the Office Manager and indeed the Financial Director in his evidence admitted that he never referred to the Claimant as the Office Manager.

No consideration appears to have been given to any other possible way forward other than to make the Claimant redundant and no consideration was given to the possibility of applying the redundancy to any other department member.

The Tribunal did not have the benefit of hearing evidence from the Financial Controller or the CEO of BWM.

Having considered the evidence the Tribunal finds that the Claimant's dismissal was not for legitimate reasons of redundancy but was more likely to have arisen out of his poor relationship with the Financial Controller. No attempt was made by the Respondents to affect any form of conciliation or grievance resolution as between the parties and instead a report was hastily produced and precipitously acted upon.

In all the circumstances the Tribunal finds that the redundancy was not a legitimate redundancy and the Claimant was unfairly dismissed and is entitled to succeed in his application under the Unfair Dismissal Acts, 1977 to 2001.

The Tribunal finds that having enquired into the matter that compensation is the most appropriate remedy.

The Claimant who is 48 years of age and has been employed by the Respondent for almost 20 years made a reasonable effort to obtain alternative employment in the aftermath of his dismissal.

He ultimately obtained employment but at a considerably reduced salary from that which he enjoyed in the position that he had formerly occupied.

He had been in receipt of a total package of approximately €1500.00 per week while in the employment of the Respondent but in his new role was in receipt of approximately €865.00 gross per week. He was in receipt of unemployment benefit from the date of his dismissal until the 20<sup>th</sup> of May 2008.

The Tribunal finds that the Claimant is entitled to recover damages in respect of the period between the 29<sup>th</sup> of February 2008 and the 20<sup>th</sup> of May 2008 and in respect of the differential between the income that he now has and that which he formerly enjoyed.

Consequently, the Tribunal measures compensation in respect of the Unfair Dismissals Acts, 1977 to 2001 at €65,000.00.

In addition the Claimant was forced to take 9 days holidays during his notice period. In the circumstances the Claimant is entitled to 9 further days pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and the Tribunal measures this at €2,700.00.

Consequently, the Tribunal makes an award in this case in the sum of €67,700.00.

No award is being made under the Redundancy Payments Acts, 1967 to 2003 and the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

