

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

UD1217/2008

claimant

Against

Employer

respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr. C. Ormond
Mr. N. Broughall

heard this claim at Dublin on 3rd February 2009

Representation:

Claimant(s): Mr Stephen Lyons, Impact, Nerney's Court, Dublin 1

Respondent(s): Mr. Adrian Twomey, Advokat Compliance Limited, Dun Barra,
Dunanore, Bree, Enniscorthy, Co Wexford

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant told the Tribunal that she commenced employment with the respondent on 18 May 1998. She undertook work as a project manager in a European project. Her work involved developing a relationship in the workplace between management and unions. Where a number of problems could not be resolved she designed projects for workplace partnership. On 11 August 2008 she received e-mail from GP that she was temporarily laid off, the reason being that there was no work in the future. She was shocked and taken aback and she tried to contact GP and PR in the respondent. She left a telephone message for GP and she did not receive a response for two days. The work that she undertook over the past ten to eleven years had not changed and her invoices brought in substantial money to the respondent. She had to inform clients she was let go and this left her in a very humiliating situation. She had taken out loans that she did not insure and she was devastated. She could not understand how work would end and she frequently worked sixty hours a week. The revenue that she brought in met the respondent targets. She was due to have a meeting in May 2007 but the meeting was cancelled the day before. GP told her that he was very

happy with the level of work she was bringing in. GP needed to know the clients names as he had to monitor invoices and he was aware of potential work. Business was secured by word of mouth and she was never given promotional material.

At a staff meeting she was told there was nothing to worry about. It was not true that she was unwilling to discuss plans with GP and he always asked her how much business was coming in. The Head of Industrial Relations in a university contacted her regarding undertaking work there. GP was aware of this and she was owed over €6,000 expenses. She had sanction to proceed in the university and there is no one undertaking that work now. The university paid her and she reimbursed the respondent. The respondent had projects until 2010.

In cross-examination she stated that she presumed that she was an employee of the respondent. The respondent had not contacted her since August 2008 and she has been assigned no work since August. Her union representative was in contact with the respondent. She was aware that there were talks between her union representative and the respondent regarding redundancy. The claimant stated that there was still work for her in the respondent. She has her own mobile telephone and the respondent paid her telephone bills. She has a company laptop and a filing cabinet.

Respondent's Case

PB told the Tribunal he is chairman of the respondent. The status of the respondent is that apart from the claimant it has no employees and employees either resigned or took redundancy. The respondent will become a shelf company in the future and the respondent does not intend to wind up. The respondent will cease trading in the near future. He is not active in the respondent apart from paying outstanding bills.

In cross-examination he stated that he was chairman and GP was a consultant not an employee. The respondent will remain a shelf company as it has charitable status for tax purposes. It has no projects in the pipeline. The witness was a director and an employee of ICTU. The respondent is in the process of being wound down. The respondent will change its status when the bills are paid and as soon as is reasonably practical. He had no objection to the claimant undertaking work on behalf of the respondent and the claimant was very good at her job.

Determination

Based on the evidence of both the claimant and the respondent the Tribunal are satisfied that the claimant remains an employee of the respondent company and that her claim under the Unfair Dismissals Acts 1977 to 2001 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

