

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM OF:**

**CASE NO.**

EMPLOYEE

- claimant

UD370/09

RP374/09

**Against**

EMPLOYER

- respondent

**under**

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms O. Brennan BL

Members: Mr. D. Winston  
Mr S. Mackell

heard this claim at Naas on 20th November 2009.

**Representation:**

Claimant: Ms Kara Turner B.L., instructed by Denis McSweeney, Solicitors, Grand Canal House, 1 Upper Grand Canal Street, Dublin 4

Respondent: Ms Mairead McKenna B.L., instructed by Killilea Reynolds & Whelan, Solicitors, 201 North Circular Road, Dublin 7

The determination of the Tribunal was as follows:-

**Respondent's Case:**

The chairman of the respondent company gave evidence. The respondent is funded by its members, which totals 8,000. The respondent runs and administers show jumping events throughout the country. It liaises with government bodies.

The chairman is not employed by the respondent but works on a voluntary basis. The

respondent now employs six permanent staff.

Prior to the Director General position being advertised the chairman acted in that role for a three-month period, September to December 2006. The claimant commenced employment as Director General on 2<sup>nd</sup> January 2007. He was very successful in that role and an asset to the company.

In the year 2007/2008 the respondent was facing a deficit of €150,000. The Management and Finance Committee looked for cost savings. They tried to reduce the deficit. The claimant was involved in the exercise. They streamlined membership and cut back on overtime and on consultancy work. In September 2008 the Management and Finance Committee held a meeting and reviewed the national budget. It was decided that cuts were necessary in the administration area. The respondent could no longer sustain the position of Director General and this was discussed with the claimant on 23<sup>rd</sup> September 2008. It was felt the claimant fully understood this decision.

The decision to make the claimant redundant was communicated in writing to him the following day. The respondent offered to pay the claimant three month's salary as was stipulated in his contract of employment. The chairman also told him that he was available to discuss any concerns that he might have. The claimant discussed the option of a reduction in his salary but the chairman believed it was not an option and would not achieve savings. The chairman contended that the claimant could not be redeployed. The chairman sourced alternative positions for the claimant. He also facilitated the claimant with time off to secure work.

The claimant e-mailed the chairman outlining outstanding payments due to him. All monies were discharged to the claimant. No claim was made for a redundancy payment. He believed the claimant did not have the necessary two years service to avail of a redundancy payment. Neither the Director General nor his position has been replaced in the company.

Under cross-examination the chairman contended that the Management and Finance Committee had power to make the claimant redundant. He said that the claimant had not been forewarned of his position being made redundant. The chairman had never had any disagreements with the claimant. He held the claimant in the highest regard.

The respondent's accountant gave evidence. Following the claimant's notification of his position being made redundant, he engaged with the claimant and discussed the claimant's entitlements. To facilitate the claimant his payments were staggered over a three-month period. The accountant inserted the 31<sup>st</sup> December 2008 on the claimant's P45 to allow the claimant to avail of the full month's tax credits.

#### **Claimant's Case:**

The claimant gave evidence. The claimant was head hunted for the position of Director General of the respondent company and commenced employment on 2<sup>nd</sup> January 2007. He attended meetings of both the Executive Committee and the Management and Finance Committee on a regular basis. The Executive Committee had to ratify certain matters of the Standing Committees. Prior to September 2008 cost cutting measures were in place but at no time had redundancies been discussed.

The Management and Finance Committee held a meeting off site on 23 September 2008. Following that meeting Committee members arrived in his office unexpectedly. They informed him that they had been looking at cost cutting measures and that his position was being made redundant. The claimant was shocked and devastated. It came out of the blue. Thereafter, he attended a meeting with the members of the Management and Finance Committee.

At that meeting the Committee contended that it was unable to sustain the position of Director General and that the position was being made redundant along with other cost cutting measures in other sectors of the company. The claimant discussed the options of taking a pay cut or even going on a three-day week. The chairman had sourced two jobs outside of the company, which he thought the claimant might be interested in. The claimant applied for one job but was unsuccessful. The claimant said he was afforded little time off to source a new job. While he was given three months notice and paid from 23<sup>rd</sup> September 2008 as was stipulated in his contract of employment he nevertheless stayed on in the company until 17<sup>th</sup> October 2008. He was also paid other entitlements due to him. He retained his mobile phone until 31<sup>st</sup> December 2008 and was available to deal with telephone queries from the company. He also kept his e-mail account open until the end of the year and dealt with e-mail enquiries.

Under cross-examination the claimant said he had saved the company €116,000 on IT services which had previously been contracted out to an outside company. He contended that he had to make great efforts to secure monies owed to him. His P45 cited his date of leaving the company as being 31<sup>st</sup> December 2008 and it was this date that he believed to be his termination date from the company.

The claimant established loss for the Tribunal. He had applied for several positions and eventually secured work in April 2009 on a two-day basis. He secured full time work with the same company effective from 1<sup>st</sup> October 2009 at a significantly lower salary.

### **Determination:**

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal notes that the claimant had been head hunted for the role of Director General. The claimant had no prior knowledge of his position being made redundant and it was only on 23 September 2008 that he was firstly informed of this decision. The Tribunal is of the view that no proper procedure was used in this regard. The claimant should have been informed in advance of his meeting with the Management and Finance Committee that

his job was in jeopardy. The Tribunal notes that the claimant made representation to the Management and Finance Committee in relation to reducing his salary or even working a shorter week but the company stated that these were not options that could be explored.

In the circumstances, the Tribunal finds that the claimant was unfairly dismissed and awards him €25,000.00 under the Unfair Dismissals Acts, 1977 to 2007. As remedies under the Redundancy Payments Acts, 1967 to 2007 and the Unfair Dismissals Acts, 1977 to 2007 are mutually exclusive, the redundancy claim fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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