

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:		CASE NO.
EMPLOYEE	- claimant 1	UD442/09 MN444/09
EMPLOYEE	- claimant 2	UD443/09 MN445/09
<b>against</b>		
EMPLOYER	- respondent	
<b>under</b>		

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr C. McHugh  
Mr. J. Dorney

heard these claims at Dublin on 21<sup>st</sup> December 2009.

#### **Representation:**

Claimants: In person.

Respondent: Mr. Patrick McMahon, B. P. O'Reilly & Co., Solicitors, Coric House,  
Tallaght Village, Dublin 24

The determination of the Tribunal was as follows:

#### **Respondent's Case:**

A senior sales executive (Sse) who had worked for the respondent for five years gave evidence. The respondent is engaged in the business of on line hotel reservations. He contended that the company's Managing Director (MD) accessed claimant number 2's [sent] email account and copies of certain e-mails were forwarded to him. Claimant 2 generated e-mails on company time. An-email dated 17 January 2008 sent by him to a third party offered a website service at a 10% management fee. Sse stated that the respondent company charged a 15% management fee to

companies. Sse formed the view from the e-mails that the claimants had set up a similar business offering the same goods and services to companies but at a cheaper rate. He concluded that it was a mirror image of the respondent company. Subsequent to the claimants' dismissal the respondent's customers were approached by claimant 2 with a view to securing business for the claimants' newly formed business.

The senior sales executive was not the person who took the decision to dismiss.

### **Claimants' Case:**

Claimant 2 gave evidence. Upon his arrival at work at 8.30 on 25<sup>th</sup> August 2008 he was told by the Operations Manager that he was no longer welcome and to leave with immediate effect. He was told that he was being fired on the basis of gross misconduct. He was told to speak to the MD. He was not permitted to access his computer and he could not take his personal belongings. He tried to contact the MD in the following two days and he then received an e-mail from him stating that he was summarily dismissed.

Following his dismissal he secured consultancy work for a three-month period. He subsequently registered with FAS and applied for numerous jobs. He considered all forms of employment. He established loss for the Tribunal.

Claimant 1 gave evidence. He had worked on the operations side in the company. Following his dismissal on 25<sup>th</sup> August 2008 he asked the MD to contact him within two weeks. He received communication from the MD a month later with an outline of the reasons for his dismissal.

Since his dismissal he secured hotel work for a period of three to four months. He also worked for his father in his hotel over nine or ten weekends but was not paid for this work. He has registered with FAS and sought work. He established loss for the Tribunal.

### **Determination:**

The Tribunal carefully considered the evidence adduced. Consideration was given to the fact that on 18<sup>th</sup> September 2009 the respondent was granted an adjournment of the hearing, which was set down for 20<sup>th</sup> October 2009, as its principal witness (the person who took the decision to dismiss) was not available to attend that day. The application was granted on that basis. At the re-scheduled hearing on 21<sup>st</sup> December 2009 the Tribunal noted that this principal witness was not present but decided to proceed with the hearing.

It is highly unusual that the person who took the decision to dismiss did not attend to give evidence.

The onus is on the employer to justify to the Tribunal that the decision to dismiss was fair and reasonable having regard to all the circumstances. Since this person was not available the Tribunal had no option but to proceed and hear the case on the uncontested evidence of the claimants.

After hearing the evidence of the claimants the Tribunal is satisfied that no proper procedure was used to effect the claimants' dismissal and they were not given an opportunity to appeal the decision to dismiss them. The Tribunal finds that the dismissal of both claimants was unfair. Having taken into consideration the efforts made by both claimants to secure alternative employment and taking cognisance of the economic climate, the Tribunal awards claimant 1 €20,000 and claimant 2 €30,000 under the Unfair Dismissals Acts, 1977 to 2007. The Tribunal

also awards claimant 1 €688.46 being the equivalent of one week's notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and awards claimant 2 €1923.08 being the equivalent of two weeks notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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