

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.  
UD1176/2008

EMPLOYEE - *Claimant*

MN1083/2008

WT481/2008

against

EMPLOYER - *Respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**  
**ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. J. Sheedy

Members: Mr. J. Killian  
Mr. J. McDonnell

heard this claim at Waterford on 15th June 2009 and 10th September 2009

### **Representation:**

Claimant: The claimant was represented on the second date of hearing by P. J. Gordon & Company, Solicitors, The Burgery, Dungarvan, Co. Waterford

Respondent: A & L Goodbody, Solicitors, IFSC, North Wall Quay, Dublin 1

### **The determination of the Tribunal was as follows:**

The claimant commenced employment with the respondent as General Manager in April 2007. The respondent fabricates sheet metal for the medical industry.

#### Respondent's Case:

The Chairman of the respondent gave evidence to the Tribunal that he advertised for the position of General Manager. The claimant was successful at interview and commenced employment with the respondent in April 2007.

The sale of the respondent company was agreed for a date of the 30<sup>th</sup> June 2008. A sale of purchase agreement had been signed, however, the sale fell through at short notice. Mr. J is the President of the three shareholders of the respondent. He is resident in Southern California but he was present

in Ireland at the time of June 2008. When the sale of the company fell through the Chairman and Mr. J examined the options open to the company. These included re-structuring the company and examining if the company could manage without the position of General Manager, as was previously the case. The Chairman and Mr. J were also cognisant of the fact that a large contract was not being renewed. They examined the company's structure to identify areas where money could be saved and this included the claimant's salary as General Manager. A decision was made to make the claimant's position redundant.

The Chairman met with the claimant on the 21<sup>st</sup> July 2008 and informed him of this decision. He explained to the claimant that Mr. J intended to take a more "hands on approach" to ensure the survival and profitability of the company. The claimant was shocked, disappointed and upset. The Chairman offered him some leave and the claimant accepted this offer. A letter dated the 21<sup>st</sup> July 2008 was subsequently written to the claimant to outline the issues addressed at the meeting. The letter stated that the company had operated successfully in the past without the position of General Manager and it was decided that the duties of the General Manager could be effectively distributed amongst the existing senior management. In accordance with his contract the claimant would be paid six months pay in lieu of notice and a payment of €33,000 in respect of the June 2008 profit share. The claimant did not have the requisite service to qualify him for a redundancy payment. The letter further stated that at that time no appropriate alternative positions were available within the company but the Chairman would continue to try and identify if there was any way the claimant's redundancy could be avoided. The claimant made suggestions at the meeting of the 21<sup>st</sup> July 2008 as to how this might be achieved and the Chairman proposed investigating these with the claimant at a meeting on the 30<sup>th</sup> July 2008.

The Chairman subsequently received a letter from the claimant dated the 21<sup>st</sup> July 2008. The Chairman gave this letter much consideration and discussed it with Mr. J prior to meeting with the claimant on the 30<sup>th</sup> July 2008. The Chairman refuted that the decision to make the claimant's position redundant was in any way connected to the claimant's performance. Having considered the claimant's letter the decision remained to make the position of General Manager redundant. Individual managers would become responsible for their own departments and one manager would act as a conduit of information to Mr. J.

At the meeting of the 30<sup>th</sup> July 2008 the Chairman gave the claimant the option of deciding how the company's employees and customers would be informed of his redundancy. He informed the claimant that he could simply resign if he wished. The Chairman subsequently wrote letter dated the 30<sup>th</sup> July 2008 to the claimant following the meeting.

A further meeting was held with the claimant on the 13<sup>th</sup> August 2008 to set out the payments owing to him. On 1<sup>st</sup> September 2008 the Chairman wrote to the claimant informing him that his position was made redundant effective 31<sup>st</sup> July 2008. A payment was made to the claimant in respect of his profit share up to the 30<sup>th</sup> June 2008. The profit share was paid to the claimant in accordance with the profits of the company rather than from the auditors' accounts, as this would have provided the claimant with a lesser amount. The claimant's contractual entitlement was to a 5% share of the company's trading profits in the fiscal year to the end of June 2008. While the claimant disputed the figure paid to him as profit share it was the Chairman's view that the claimant had not taken certain deductions into account in his calculations. The company continued to pay the claimant's health subscription from May to September 2008. The Chairman wrote letter dated the 4<sup>th</sup> September 2008 to the claimant informing him that from September 2008 the company would not be paying his health insurance subscription.

The company at that time employed 57 employees; in the present time the company employees 50 employees. The position of General Manager has not been replaced.

During cross-examination the Chairman outlined how the company had previously operated for two years without a General Manager. During that time the managers were responsible for their own functions. The managers reported to the Chairman and he in turn reported to Mr. J. Since the claimant's employment terminated each of the five managers have responsibility for their own section and another employee acts as a conduit to Mr. J. The Chairman confirmed that the claimant's name remains on the company website. Work was being completed at the time of the hearing to update the website.

The Chairman confirmed that the claimant enquired about purchasing the company in early 2008. At that time a purchaser for the company was in place but the Chairman asked the claimant to put his offer in writing. However, he did not receive a proposal from the claimant. The Chairman confirmed he had received a telephone call from a firm acting on behalf of the claimant and the Chairman informed them he was open to receiving a proposal from them on behalf of the claimant.

The Chairman confirmed the net profit figure in June 2008 before dividends to be €500,000. The net profit figure for 2007 was less than this but the increase in 2008 was attributable to one specific contract that the company had secured that year. It was put to the Chairman that the claimant was paid an incorrect figure in relation to the profit share. The Chairman stated that the claimant's calculations for the profit share did not take into account certain deductions.

It was put to the Chairman that the claimant's health insurance subscription was transferred from the company effective 8<sup>th</sup> July 2008 and supporting documentation was opened to the Tribunal in relation to this matter. The Chairman repeated that the company had continued to pay the claimant's health insurance subscription on a monthly basis until September 2008.

In reply to questions from the Tribunal, the Chairman stated that alternative roles would have been considered if they had existed. The claimant did not make any specific proposals in relation to alternatives. At the time of the claimant's redundancy the company did not have the scope to make a number of employees on the assembly line redundant instead of the claimant. The claimant was paid six months pay in lieu of notice from July 2008 to the end of January 2009. If the claimant had requested to work his notice the Chairman would have acceded to this request.

#### Claimant's Case:

The claimant confirmed that during the time of his employment he wrote to the Chairman on the 3<sup>rd</sup> January 2008 expressing an interest in purchasing the company. He subsequently contacted a firm to advise and represent him on this matter. The firm put forward a verbal offer in or around May/June 2008. The Chairman informed the claimant that the offer was appreciated but the price offered was not high enough. Another purchaser was in place however this sale fell through a day or two prior to the closing date of the 30<sup>th</sup> June 2008.

The claimant gave evidence that he returned from annual leave on the 19<sup>th</sup> July 2008. He was asked to attend a meeting with the Chairman on the 21<sup>st</sup> July 2008 about the rationalisation of the company, which was very vague. It came, as a complete shock to him to be informed that he was no longer required in the company. The claimant was informed at the end of this meeting that he should not attend for work from that date and he was not provided with a choice to work his notice.

It was most unorthodox for a manufacturing business to operate without a General Manager or a Managing Director. The claimant had difficulty understanding how Mr. J could take a “hands on role” due to the time difference and geographical location. The claimant wrote to Mr. J on the 30<sup>th</sup> July 2008 outlining a number of points to be considered including how the company’s sales figures and trading profits increased by 14% and 31% respectively while the claimant held the position of General Manager. The claimant also stated in this letter that he was asked to attend a sudden meeting with the Chairman on the 21<sup>st</sup> July 2008 in which he was told he was being sent home with immediate effect. The claimant wrote to the Chairman on the 14<sup>th</sup> August 2008 seeking a reference, as he had not yet received one from the company.

The claimant stated there was a shortfall of €3,810.00 in the profit share payment made to him by the respondent. He attempted to bring this matter to a conclusion in correspondence to the Chairman in January 2009 in which he highlighted the shortfall. The claimant did not receive his P45 from the company until mid September. The claimant was without income from the end of July to mid September 2008 and believed he was entitled to eight weeks salary as a result. The claimant was amazed that his name continues to remain on the company’s website.

The claimant received a letter from his health insurer informing him that his policy had been transferred from the company on the 8<sup>th</sup> July 2008. From that time onwards the claimant paid the subscription.

The claimant felt he had not received an explanation as to why his position was terminated and he found it unexplainable how the company operated without a General Manager.

During cross-examination the claimant confirmed that he had received payment for six months pay in lieu of notice. It was put to the claimant that on the 21<sup>st</sup> July 2008 he was informed of the possibility that his position would become redundant. The claimant replied that the termination of his employment was not put to him as a possibility and he was effectively sent home on the 21<sup>st</sup> July 2008. The claimant did not accept that the role of General Manager had disappeared.

It was put to the claimant that no verbal offer followed his letter to the Chairman in January 2008 expressing an interest in the acquisition of the company. The claimant replied that a firm on his behalf had sent an email and he himself had made a verbal offer to the Chairman but was told the offer was not high enough. It was put to the claimant that the Chairman did not receive a verbal offer from the claimant and had not received an email on his behalf.

The claimant was cross-examined on his loss. The claimant secured new employment on the 1<sup>st</sup> October 2008 but on a lesser salary. His salary decreased by €13,500.00.

In reply to questions from the Tribunal, the claimant stated that on the 21<sup>st</sup> July 2008 he made it clear that he did not want to lose his job with the company. He did not make any suggestions beyond that, as he was unable to think of alternatives at that meeting. If the company had offered an alternative role to him he would have considered it as he has the ability to work in many roles given that he has thirty years experience working in different levels of management. However, no such alternatives were offered to him.

**Determination:**

The Tribunal carefully considered the evidence adduced. The respondent company did not satisfy the Tribunal that fair procedures were followed in selecting the claimant's position for redundancy. There appeared to be no attempt or sufficient efforts made on the part of the company to consider other alternatives in reaching the cost-saving required. The Tribunal awards the claimant the sum of €20,000.00 as compensation under the Unfair Dismissals Acts, 1977 to 2007.

During the course of the evidence the claimant accepted that he had received six months pay in lieu of notice in accordance with the conditions of his employment. Therefore, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, is dismissed.

The claim under the Organisation of Working Time Act, 1997 was withdrawn by the claimant during the course of the hearing.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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