

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO.
UD981/2009
MN1000/2009

against

EMPLOYER - respondent

under

**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. P. O'Leary BL

Members: Mr. M. Murphy
Mr. O. Nulty

heard this claim in Navan on 18 March 2010

Representation:

Claimant(s):
Mr. Paul Stack, P & G Stack, Solicitors,
Main Street, Maynooth, Co. Kildare

Respondent(s):
No legal representation

The determination of the Tribunal was as follows:-

The claim

The claimant was employed by the respondent on 1 February 2008 as general manager on a salary of seventy thousand euro per annum with an allowance for car, fuel and phone. He was paid up to 31 July 2008 but only intermittently thereafter. He received the sum of €9,557.50 in respect of salary from 1 August 2008 to the date of his dismissal in late March 2009. (This was the subject of separate proceedings.) The claimant received a letter from the respondent on 27 March 2009 dismissing him with immediate effect although the claimant had not received any verbal or written warnings. There was no notice whatsoever and it was alleged that fair procedures had not been followed.

The defence

It was contended that the claimant's claim for unfair dismissal and minimum notice should not succeed because the claimant had been in receipt of payments (from debtors) that had been due to the respondent.

Determination:

The Tribunal carefully considered the arguments of both sides in this case. The claimant was an employee in that he had a contract and would have needed to hold fifteen per cent of the respondent's shares to be no longer solely an employee. The Tribunal was not satisfied that the claimant had fully passed on to the respondent information about cheques that he had received and then used to recoup monies that he considered to be outstanding to him from the respondent. The claimant thus significantly contributed to his own dismissal. However, it was not established to the Tribunal that there was other than a marked absence of disciplinary procedure by the respondent. The claimant should have fully informed the respondent as to what monies he was getting from customers but it was not shown to the Tribunal that there had been gross misconduct such as might have justified summary dismissal in this case.

The Tribunal finds that the claimant was unfairly dismissed within the meaning of the Unfair Dismissals Acts, 1977 to 2007, albeit with significant contribution on his own part. In all the circumstances of the case the Tribunal deems it just and equitable to order that the respondent pay the claimant compensation in the amount of €5,369.88 (this amount being equivalent to four weeks' pay based on gross weekly pay of €1,342.47) under the said legislation.

In addition, the Tribunal allowing the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, awards the claimant the sum of €1,342.47 (this amount being equivalent to one week's gross pay) under the said legislation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)