

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE

CASE NO.

UD1288/2009

against  
EMPLOYER  
under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. Revington S.C.  
Members: Ms A. Gaule  
Mr J. Flannery

heard this claim at Dublin on 6th May 2010

#### Representation:

Claimant:

Mr. Jonathan White, Jonathan White & Co, Solicitors,  
Watson & Johnson Centre, Church Road, Greystones, Co Wicklow

Respondent(s) :  
XXXXXXX

The determination of the Tribunal was as follows:-

#### **Respondent's case**

The respondent started business on his own in May 1996. In March 2006 he employed the claimant on a part time basis from 9am to 1pm Monday to Friday. This was initially on a temporary basis but developed into a more permanent arrangement. The claimant mostly handled personal injury cases but also occasionally handled other types of work.

In March 2008 the respondent took on another solicitor to handle conveyance. This new employee was responsible mainly for conveyance but also handled probate towards the end of his employment.

The respondent stated that the claimant had asked for a full time position and that he had said he was willing to work full time for €70,000 per annum. However the respondent told him that he (the claimant) was not billing three times his salary.

The reason for making the claimant redundant was that the respondent was in financial difficulty and could not continue to employ two other solicitors. The respondent had decided to do the work himself rather than employ the claimant and let him go after 2<sup>nd</sup> January 2009. It was easier for him to take over the claimant's work as he would have to "read into" the conveyance that the other employee was engaged in.

There was no consultation prior to making the claimant redundant because of the suddenness of the financial situation. No alternatives were discussed with the claimant because the respondent felt there were no alternatives. The respondent also made the other employee redundant at the end of July 2009

### **Claimant's case**

The claimant began by outlining his work experience before his employment with the respondent. Initially he had been asked by the respondent to come work for him on a part time basis to assist in a large commercial case. The claimant began work on this basis but quickly developed into a role of handling personal injury cases.

From the outset of his employment the claimant was led to believe that there was a possibility of full time employment with the respondent and this issue was discussed prior to the employment of another solicitor in March 2008. The claimant was willing to work full time and denied having asked for a salary of €70,000 per annum.

The other employee was taken on without prior consultation with the claimant and in fact he did not even know that there was another employee until about three weeks after this person had started. The other employee was largely responsible for conveyance.

On the 18<sup>th</sup> December 2008 the claimant was informed that he was being made redundant. This was presented to him as a "fait accompli". However the claimant felt that he could easily have done conveyance with a little help from the respondent. The claimant was not given an opportunity to suggest alternatives to his being made redundant. The last day of employment for the claimant was 2<sup>nd</sup> January 2009.

### **Determination**

Having considered the evidence presented to it the Tribunal is satisfied that the respondent failed to carry out a selection for redundancy procedure. Under the circumstances the claim for unfair dismissal must succeed and the Tribunal awards €3,000.00 to the claimant. The Tribunal is cognisant of the fact that €3,400.00 has been paid by way of redundancy and this award is over and above that amount.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

