

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE

CASE NO.  
UD969/2009, RP1097/2009  
MN986/2009

against

EMPLOYER

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly B L

Members: Mr F. Cunneen  
Ms. E. Brezina

heard this claim at Dublin on 25th March and 8th June 2010

### **Representation:**

Claimant : Ms. Urusla Finlay B L instructed by  
T J Brabazon & Company, Solicitors, Brighton House, 29 Fairview Strand, Dublin 3

Respondent : Mr. Eamonn McCoy, IBEC, Confederation House,  
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

### **Preliminary issue**

Prior to the complete cessation of the claimant's employment with the respondent in the spring of 2009 he signed a letter that carried the heading: *Declaration of Acceptance of Redundancy fromXXXXXX*. That letter, dated 1 April 2009, was issued by a director of the company and signed by the claimant on 9 April. Apart from confirming that he accepted payment in lieu of his statutory notice the claimant also agreed to avail of an ex-gratia redundancy payment together with his statutory rights for redundancy. In accepting those payments and other terms of that letter the claimant agreed that this was in full and final settlement of all current, pending and future claims that he had or might have against the respondent. Those claims included but were not exclusive to the Acts stated above.

The latter part of this letter read as follows:

*I understand that the Company has confirmed to me that, notwithstanding my signature of this Declaration, it will*

- 1. Promptly rectify any error in the calculation of the payments due to me under the terms of this Declaration; and*
- 2. Make any additional ex gratia payment that becomes available from the company to employees who become redundant available to me, providing that I would qualify for such additional payment if I had remained in employment with the Company beyond 3 April 2009.*

*Having been given the opportunity to obtain independent advice, I have agreed to sign this declaration without coercion or duress.*

Due to the contents of that letter and the claimant's signature to it the respondent invited the Tribunal to find it had no jurisdiction to hear this case under the above Acts. The respondent contended that the claimant was kept apprised of the process up to his cessation and had received appropriate advice prior to accepting the contents of that letter. The company submitted a recent High Court decision and a number of Tribunal determinations in support of their case.

Having also heard submissions on behalf of the claimant and having considered this application the Tribunal found that the High Court ruling satisfied most of the aspects before it. However, evidence was required by the Tribunal in this particular case so as to allow it to make a more informed and precise Determination on the preliminary issue and its application.

The claimant recognised and was familiar with an internal information memorandum circulated to staff on the forthcoming and proposed redundancy situation from the company, dated 31 March 2009. Part of that document read:

*In order to receive your cheque you will be required to sign a letter which will itemise the redundancy payments offered by the company as full and final settlement of all outstanding claims to exclude personal injury claims. (See copy of letter posted)*

The claimant also acknowledged he received another letter from the company dated 1 April 2009. That letter gave the witness formal notice of his termination of employment. That announcement left him "in shock and denial" on the realisation he was losing his job. While he received some feedback from his trade union on developments leading to his termination of employment the claimant said this was not the case with the respondent. He gained the impression from the union, however, that the company was behaving in an intransigent way towards the terms and conditions pertaining to this termination. He understood the employees, including himself, were facing a "de-facto" situation in the sense that they either agree and sign up to those terms or lose his job without securing some or all of those payments. The witness added that he was threatened a number of times that his ex-gratia payment would be taken away in the event he did not agree to the termination package.

The claimant called into the office of Hangar 6 at Dublin Airport on 9 April 2009. Among a sheaf of papers presented to him that day was the above-mentioned *Declaration of Acceptance of Redundancy from XXXXXX*. Despite this being his first sighting of that letter the witness read it in its entirety and then signed it. He was "shocked" and "thrown" at its contents but nevertheless felt

compelled to endorse it. He needed the money on offer as he was now out of work and had “nowhere to go”. At no stage in this scenario was the claimant told he could get independent advice on the contents of that declaration.

## **Determination**

The issue before the Tribunal which was considered over a period of two days was whether or not the Tribunal have jurisdiction to hear the claimant’s claim under Redundancy Payment Act, Minimum Notice and Terms of Employment Act, Unfair Dismissal Act and Organisation of Working Time Act in circumstances where the claimant signed a waiver/declaration barring him from bringing any claims (except for personal injury claims) upon accepting his redundancy package.

The claimant stated that he was not given adequate notice of the content of the declaration, that he was not given advice to seek appropriate independent advice in relation to the consequences of signing the declaration and that he was placed under duress to sign the declaration at a time of personal emotional vulnerability.

NOC, the Vice President of Human Resources became aware that the entire Dublin based work force was to be made redundant when he and other senior management attended a meeting in Zurich on 9 February 2009. A general staff meeting was called in Dublin in Hanger 6 on 12 February 2009 to inform the staff of the situation. The majority of staff attended that meeting. Following that meeting a detailed letter setting out the entire situation was posted around Hanger 6 and on the staff notice board. The news of the closure became the subject of intense media focus and was widely published across all forms of media over the two-month period.

The Tribunal is satisfied that a very comprehensive information/ negotiation process was entered into by the respondent. There were nine individual union representative bodies within the respondent company. Those nine unions came together to form one body that later became known as the Union Forum. The claimant was a member of SIPTU that was one of the unions making up the forum. It was from them, as well as from Company sources that he obtained information and obtained his advice. The advice sought does not have to be legal advice. It should be appropriate advice depending on the specific situation. The Tribunal is satisfied that the claimant’s union was well placed to give appropriate advice to him in relation to the redundancy. From 12 February, 2009 until early April 2009 the respondent and the union forum had meetings very frequently. The outcome of all of those meetings was circulated in written form to all member unions and to the Union Forum itself.

There was substantial pressure on the respondent to move the redundancy process along quickly. It became clear and was accepted by the Union Forum that the maximum redundancy package available for the entire work force was € 48.6m. That figure was made up of € 25.9m for Statutory Redundancy, € 7.7m for Statutory Notice and € 15m for Ex Gratia payments. A formula was created to distribute the ex gratia payments in a fair and equitable way. It amounted to .84 weeks per years of service. The Union Forum accepted this formula as being fair and equitable.

The Tribunal is satisfied that all relevant information in relation to the entire redundancy process was given to the Union Forum at each and every stage of the procedure and that the union forum played an active role in that process. The outcome of each meeting was communicated generally to all staff members via the notice board system. A full and comprehensive explanation of the process that was implemented by the respondent was given to the Union Forum in letter

format on 31 March 2009. On 2 April 2009 the claimant's union SIPTU requested a last minute amendment to the declaration. This request was granted. We are satisfied that the claimant's union was at all times fully briefed in all matters affecting their members personally, financially and legally. They had in their possession the two forms (RP50 and Declaration) that the claimant was requested to sign a number of days prior to the 3rd April 2009.

On 3 April 2009 all of the employees available on the day presented themselves at Hanger 6 wherein the respondent had set up a system to issue redundancy cheques to each employee. The system consisted of five desks, each manned by two Human Resources representatives who were there to oversee the signing of the two forms, to distribute the redundancy packages and to answer any queries anyone had in relation to the process or the forms themselves. Evidence was given that some employees simply signed the forms and took their cheques and others had many queries and took up to an hour to sign. The claimant did not attend on 3 April with the majority of employees. He said he was not fit to on that date. There was no evidence that the respondent put any pressure on the claimant to sign on that date or indeed on 9 April 2009 when he did sign the forms. The evidence adduced showed that whilst the claimant may have found the whole process traumatic, he was not put under any pressure by the respondent to sign the forms.

Based on all of the evidence adduced, legal submissions made and documents submitted the Tribunal finds that the circumstances under which the claimant signed the declarations as set out above removes jurisdiction from this Tribunal to hear the matter.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

