

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

UD1553/2009

against
EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr K. Buckley
Members: Mr. P. Casey
Mr J. Flavin

heard this claim at Cork on 27th July 2010

Representation:

Claimant:

Mr. Leonard Leader, Frank Joyce & Co., Solicitors, 25 Grand Parade, Cork

Respondent:

No appearance by or on behalf of the respondent.

The determination of the Tribunal was as follows:-

This company went into liquidation on 8th October 2009 and Kavanagh Fennell was appointed liquidator. The liquidator chose not to attend the hearing. However they informed the Tribunal by fax on the date of the hearing that they had been notified that a former director of the company would be in attendance at the hearing.

The former director (hereafter referred to as MD) requested permission to be heard as a witness in this case. The claimant had no objection to this and the Tribunal allowed the request.

MD stated that the claimant was initially employed on a full time basis. However having become ill while on holidays in August 2008 the claimant's work pattern changed to part time. After the end of year 2008 MD realised that staff would have to be let go. The claimant was the third person to be laid off. There were two reasons for selecting the claimant for redundancy. One was that he was part time and easier to be without and the other was that he was an expensive employee. The company became insolvent in June 2009 and shut down completely in August 2009. There

were between twenty and twenty-two employees and all had been let go between October 2008 and June 2009. MD stated that the claimant was not dismissed because of his illness and there was no reason other than redundancy for termination of his employment.

Claimant's case

The claimant stated that he commenced employment with the respondent as Sales Manager on 1st February 2008 and was dismissed on 8th or 9th March 2009. He was absent from work due to illness for approximately two or three weeks but then returned to full time employment about mid to late September 2008. According to the claimant he never worked part time and in fact worked fifty to sixty hours per week. The claimant was due arrears of wages and met with the respondent in January 2009 who told him that he was trying to re finance and hoped to sort things out. At a subsequent meeting in March 2009 the respondent told the claimant that he was fired. He also told the claimant that he was sorry and it was over.

There were three other employee's let go before the claimant. One person had been let go but then replaced. Another person who managed the office was let go in December 2008 and a van driver was let go in January 2009. The claimant said, "I was real first person to be let go". The rest of the employees were let go when the company wound up in August 2009.

Determination

Having adduced the evidence presented to it the Tribunal is satisfied that the claimant was not unfairly dismissed from his employment and the claim under the Unfair Dismissals Acts, 1977 To 2007 fails. A genuine redundancy situation existed at the time of termination and the claimant was not entitled to a redundancy lump sum due to being employed for less than 104 weeks.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

