

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE – claimant

CASE NO.  
UD801/2009  
RP886/2009  
MN829/09  
WT351/2009

against

EMPLOYER – respondent

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**REDUNDANCY PAYMENTS ACTS, 1967 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 C Corcoran BL

Members: Mr F Moloney  
Ms M Finnerty

heard this claim at Dublin on 29th April 2010

Representation:

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Claimant(s): Mr Richard Downey BL, instructed by:  
Mr Barry Healy  
Barry Healy & Company, Solicitors, "Laurel Lodge", Hillside, Monaghan

Respondent(s): Ms Laura Michelle Moran on behalf of Michael McAteer, Liquidator  
Grant Thornton, 24-26 City Quay, Dublin 2

The determination of the Tribunal was as follows:

Respondent's Case:

The respondent's representative submitted that the respondent company went into liquidation on February 25<sup>th</sup> 2010. The respondent representative did not bring any witnesses to the hearing.

Claimant's Case:

The claimant gave evidence that on February 6<sup>th</sup> 2009 he was called into the Director's office at

lunchtime. The managing director and another manager were present. The claimant was aware that during that day staff were being called to the office and asked to take a 20% reduction in their pay. The managing director told the claimant that he was being dismissed for gross misconduct for stealing. The claimant was completely shocked. He had been with the company for over 29 years.

The claimant was shown CCTV which showed him handing a tin of paint to his brother. The tin of paint was for the claimant as they were painting his house. There was a 60-day credit system for staff to pay for goods. Only staff members were allowed to avail of the credit, but the claimant contended that the tin of paint was for him, and not his brother, and that he had paid for it prior to the meeting on February 6<sup>th</sup> 2009. The meeting lasted five minutes and he was given his wages. The claimant gave evidence of his loss.

The claimant's representative withdrew the claim under the Organisation of Working Time Act. He contended that the claimant was entitled to eight weeks notice. Had the claimant not been dismissed he would also have been entitled to a redundancy payment like the other employees who were made redundant in February 2010.

Determination:

The Tribunal finds that the claimant was unfairly dismissed. Under the circumstances the Tribunal finds that the most appropriate award is by way of compensation. Under the relevant provisions of the Unfair Dismissals Act 1977, and in particular section 7(3) thereof, the Tribunal awards the sum of €34,575.00 (thirty-four thousand, five hundred and seventy-five euro) compensation to the claimant.

As awards under the Unfair Dismissals Acts, 1977 to 2007, and Redundancy Payments Acts, 1967 to 2007, are mutually exclusive the Tribunal dismisses the appeal under the Redundancy Payments Acts, 1967 to 2007.

Under the relevant provisions of the Minimum Notice and Terms of Employment Acts, 1973 to 2005, the Tribunal awards the claimant €4,408.00 (four thousand, four hundred & eight euro) in respect of eight weeks notice.

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

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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