

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

-claimant

CASE NO.
UD1617/2009

Against

EMPLOYER

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr G. Andrews
Ms S. Kelly

heard this claim at Limerick on 23rd November 2010

Representation:

Claimant: Mr. Eoin Clifford B.L. instructed by M.J. O'Callaghan & O'Keeffe, Solicitors,
New Market Square, Mitchelstown, Co Cork

Respondent: Mr. Pat Barriscale, Holmes O'Malley Sexton, Solicitors, Bishopsgate, Henry Street,
Limerick

Respondent's Case

A Director (BS) of the Respondent gave evidence. Prior to the current owners (an American company) buying the respondent, the claimant was part of the management team. The respondent continued to employ the claimant as the General Manager after the buy out. In October 2007 the respondent issued a contract to the claimant stipulating a three-month notice period on termination by either party.

The economic climate deteriorated rapidly and affected business dramatically both in Ireland and for the parent company in America. The respondent was concerned and entered into intensive discussions on how to proceed with the business; the claimant was involved in all of these discussions. As well as other measures the respondent management took a 20% pay cut. The claimant devised a cost cutting plan, which was accepted by the management. The witness is not aware that a plan was proposed for the claimant to take on two larger roles due to be made redundant and he would be replaced.

At the end of March the claimant was involved in discussions on radical cost reductions with two of the American directors. The claimant went to America in early April 2009 for discussions but did not meet with the American Directors. One of the American Directors informed the witness that when he was in Ireland in April he would meet with the claimant to 'tidy up matters.' The witness believes this meeting was to finalise the termination of the claimant's employment after the American Directors had extensive termination discussions. It was decided the claimant would be paid in lieu of his three months notice.

The claimant was presented with a termination agreement on the 14th of April 2009. The claimant did not sign this agreement at the meeting. The claimant was not replaced. A number of people came over from America to assess the operation but were not full-time in Ireland.

The respondent was given a loan that was secured by the American parent company. The loan repayments to the parent company were on the respondent's accounts.

Claimant's Case

The claimant was employed as the General Manager for the respondent. As part of the claimant's contract he negotiated 'sweat equity' i.e. he would get 1% share equity every year up to five years when the value would be deposited to his pension. The claimant, as a shareholder, felt that he was very much involved in the cost cutting discussions; he was part of the solution.

The claimant received a phone call from a colleague suggesting the claimant had been fired. The claimant said he would sort it out with the Board of Directors and wrote a letter outlining the issue. The claimant presumed he was due to meet the Directors during his trip to America to discuss the contents of his letter. The meeting with the Directors never took place.

On the 14th of April the claimant was called to a meeting. The claimant thought this meeting was to rectify his issues as previously outlined. At the meeting the claimant was informed that they were 'parting ways', he was issued with a termination agreement and asked to make it as amicable as possible. The claimant was asked if he wanted to leave immediately or stay for a few days. The claimant asked if he could tell the staff he was leaving so asked the respondent to wait until the following day. The claimant returned the next day to discover all his access had been revoked; he was informed the Directors would be telling the staff and he was escorted to clean out his desk.

The claimant believes his employment was terminated as a direct result of his letter to the Board of Directors. The claimant never had 'termination discussions' with the respondent. The respondent never questioned the claimant's performance.

The claimant has been unsuccessful in securing employment since the termination of his employment with the respondent.

Determination

The Tribunal is of the unanimous view that the termination of the claimant's employment occurred in circumstances where no objectives or compelling justification was offered in explanation.

The Tribunal would emphasise that the claimant occupied the position of General Manager since his engagement in October 2007. Although the contract provided for the mutual termination on

three months notice, the argument put forward by the respondent representative, that the claimant was simply dismissed because of poor financial performance of the company does not in the Tribunal's view justify the dismissal.

External events including the global recession surrounded the duration of the claimant's contract. The Tribunal heard evidence that a loan granted to the respondent involved repayments to the parent company that proved an onerous liability on the respondent. These factors in the view of the Tribunal cannot be used to justify the claimant's dismissal.

Throughout the duration of the employment no complaints were made to the claimant concerning his performance in his post of General Manager or concerning his capacity or aptitude to meet the duties, which the position demanded or required.

The Tribunal is of the view that other than the contracted notice first brought to the claimant's attention on the 14th of April; no advance notice of the dismissal was given to the claimant.

In all the circumstances the claimant's dismissal is held to be unfair, accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds. The Tribunal awards the claimant the sum of €185,000.00 as compensation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)