

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE

- claimant

CASE NO.

UD1793/2009

Against

EMPLOYER

- respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy SC

Members: Mr M. Noone
Mr A. Butler

heard this claim at Wicklow on 17th February 2011.

Representation:

Claimant: Ms Audrey Coen BL, instructed by Augustus Cullen Law, Solicitors, 7 Wentworth Place, Wicklow

Respondent: No appearance by or on behalf of the respondent

The determination of the Tribunal was as follows:-

Determination:

The Tribunal is satisfied that the liquidator was properly notified of the hearing and the case proceeded in his absence.

The claimant said substantial commission due to her was not paid and this was a factor that led to her resigning.

In form T2 the respondent agreed that commissions were unpaid.

The Tribunal finds that the respondent was in breach of the fundamental term of employment, namely, to pay the employee. Failure to pay an employee "entitles" an employee to treat the employment contract as repudiated, and is a classic ground for constructive dismissal.

The Tribunal finds that the claimant was constructively dismissed, and the dismissal is deemed to be unfair under the terms of the Unfair Dismissals Act.

In assessing financial loss, the Tribunal has regard to the fact that her employment would have ended in March 2010 when the company went into liquidation.

The claimant's loss is therefore limited to an eight month period which the Tribunal measures as €36,000.00.

The Tribunal awards the claimant €36,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)