

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE –**claimant**

CASE NO.
UD56/2007

against

EMPLOYER –**respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Hurley

Members: Mr. J. Hennessy
Mr. T. Kelly

heard this claim at Thurles on 2 September 2010

Representation:

Claimant: Ms. Caroline Keane, Sweeney McGann Solicitors,
67 O'Connell Street, Limerick

Respondent: Mr. Ger Connolly, Matheson Ormsby Prentice Solicitors,
30 Herbert Street, Dublin 2

The determination of the Tribunal was as follows:

As its name implies the respondent is a hardware business, which was incorporated in or around June 2000. Prior to the incorporation the business operated as a partnership between two brothers (D1 and D2) who are now the directors of the respondent. Shortly prior to the incorporation the claimant was hired as General Manager from April 2000. The business traded successfully following incorporation and the claimant's employment was uneventful until he suffered a heart attack, which led to by-pass surgery, on 27 December 2005.

No written contract covering the claimant's employment was opened to the Tribunal but while the claimant was on sick leave the respondent continued to pay him. In the claimant's absence his duties were shared between D1, D2 and other members of their respective families with D1 assuming the main roles of the claimant.

During the claimant's absence there was informal contact between the parties. During March 2006 D2 reached a significant milestone and the claimant attended D2's birthday celebrations. The claimant's position is that, at this function, he scotched rumours that he was not going to return to his position with the respondent. His position is further that the family members all told him to take his time before returning to work.

The respondent's accountant, who had been involved in the claimant's recruitment, met the claimant on both 24 April and 23 May 2006. The claimant's position is that on 24 April he was told

that the respondent wanted to know how much longer he would be away from work and that he referred to his next appointment with his cardiologist in mid June but indicated the possibility of returning in a part-time capacity prior to that appointment. The accountant, who had been subpoenaed by the claimant, gave evidence that the question of the claimant returning on a part-time basis was not mentioned until the meeting 23 May. He could not recall if the directors were aware of his having met the claimant on 24 April.

The claimant's position is that on 23 May 2006 the accountant told him that the respondent did not want him back. The accountant's evidence was to the effect that the directors were not aware of this meeting and further he had not told the claimant that respondent did not want him back.

On 31 May 2006 the respondent sent the claimant a letter jointly signed by D1 and D2 in which the claimant's proposal to return to work on a part-time basis was referred to. The letter asserted the importance of full-time commitment in the role of general manager and informed the claimant that the position of General Manager was to be made redundant from 14 July 2006. Form RP50 notification of redundancy was served with this letter.

The claimant met the directors on 9 June, 9 August, 3 October and 16 October 2006 to discuss the terms of a severance package. The claimant was accompanied by a human resource consultant at the last three meetings, the directors had a consultant with them at the last two meetings. The claimant signed the RP50 and received the statutory redundancy payment on 3 October 2006.

Determination:

The respondent never enquired in a formal sense about the claimant's state of health during his recovery from surgery. D1 told the Tribunal that as he had not heard from the claimant he assumed that the claimant was not coming back to work. The Tribunal is satisfied that the respondent, having learned to do without the claimant during his absence on sick leave, took the decision to declare his position redundant on grounds, which were other than impersonal as regards the claimant. This renders the selection of the claimant for redundancy as unfair. Being satisfied that compensation is the appropriate remedy in this case the Tribunal, when assessing the award, has made the computation solely on the agreed figure of gross pay as submitted on the recently received amended form T1A. The Tribunal notes that the statement of loss submitted on behalf of the claimant was predicated on a higher rate of pay about which there is an altogether separate dispute between the parties. The Tribunal deems that the appropriate award in this case is €84,000-00, being the maximum allowable 104 weeks' pay, under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)