

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE

-Claimant

CASE NO.

UD2583/2009

against

EMPLOYER

-Respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. D. Donovan B.L.

Members: Mr. J. Browne
Ms. S. Kelly

heard this claim at Carlow on 24th March 2011

Representation:

Claimant: In Person

Respondent: Mr. Conor O'Doherty B.L. instructed by Mr. Philip Vint,
Clarke Jeffers & Co, Solicitors, 30 Dublin Street, Carlow

The determination of the Tribunal was as follows:

Dismissal as a fact was not in dispute.

Both parties were in agreement that the respondent named on this order was the claimant's employer. The respondent is a holding group for a number of different entities. The claimant carried out work on behalf of one of those entities (hereinafter referred to as Entity E). Entity E was primarily German-based but the claimant was responsible for developing its Irish-based operation. He held the position of Country Manager and was based in Ireland.

Respondent's Case:

It was the respondent's case that S.6 (4)(C) of the Unfair Dismissals Acts, 1977 to 2007, applied in this case as the claimant's employment had terminated by reason of redundancy when Entity E ceased its operations in Ireland.

The current Managing Director of the respondent gave evidence that Entity E sold software. The claimant's employment as Country Manager commenced in November 2007. His contract of employment was opened to the Tribunal. The claimant's remuneration consisted of a fixed payment and commission. A commission agreement document was signed on an annual basis. The

commission agreement documents for 2008 and 2009 were opened to the Tribunal.

The Managing Director stated that the budget was decided by November of each year. By early the following year the sales and commission figures were agreed based on the budget figures. It was a standardised practice that all country managers worldwide would sign the commission agreement document in or around March each year.

Financial analysis documents for Entity E were opened to the Tribunal. Except for November 2008, neither the budget figures nor the target figure of €200,000 were reached. Costs were three times more than the turnover figure. A loss of €182,000 was suffered by Entity E in 2008 and the forecast for 2009 was poor. Heavy losses were expected in the region of €217,000. As part of his role, the claimant forecasted expected sales figures and provided sales figures for the previous month, the current month and the month to come. He would therefore have been aware of the financial performance of the business.

It was decided at a meeting in Germany that given the financial figures, the Irish-based operation would have to close. In early April 2009, the Regional Manager flew to Ireland, met with the claimant and the then Managing Director and communicated the decision to them. The claimant was provided with a letter of termination dated 7th April 2009, which informed the claimant that his employment would terminate with effect from 30th June 2009. The claimant was paid his full salary and expenses up until that time. A letter dated 22nd June 2009 was also provided to the claimant, which outlined in full the circumstances, which had resulted in the redundancy situation. Entity E's Irish-based operation closed in June 2009.

On 1st May 2009, the witness became the Managing Director of the respondent when his predecessor accepted redundancy.

During cross-examination it was put to the witness that the claimant was given reassurances a month prior to the redundancy, that his position was secure and that he had signed a new contract in March 2009. The Managing Director replied that there could have been no guarantee given to the claimant and that the document signed by the claimant in March 2009 was not a contract but a commission agreement document.

In reply to questions from the Tribunal, the Managing Director confirmed that Entity E currently does not have employees in Ireland. The respondent currently has 16 employees in Ireland. Entity E's residual business in Ireland is handled by its UK and German-based business.

The Operations Manager for the respondent gave evidence that he commenced employment in 2008. From that time he approved the budgets and expenses for Entity E for the claimant and his colleague who were both subsequently made redundant at the end of June 2009. He confirmed that Entity E was making a loss and that the wages and expenses far outweighed the sales figures.

During cross-examination he accepted that the claimant had worked until the end of June 2009 to complete contracts on behalf of Entity E.

Claimant's Case:

Giving evidence the claimant stated that when he commenced employment in November 2007, Entity E was experiencing massive growth of 26% year-on-year. He was assured he would be given a period of approximately three years to fully implement the Irish-based operation.

Year one's losses were accepted by the board and a prediction made that the losses would continue into 2009. In early 2009 the claimant enquired about the security of his position. Subsequently, the claimant's commission structure for 2009 was agreed in February 2009. On the basis of his appraisal and the signing of the contract in March 2009, the claimant felt that he had a mandate and strong support to continue the Irish-based operation in 2009. He was then informed on 7th April 2009, without prior discussion, that his position was being made redundant because of the closure of the Irish-based operation.

The claimant gave evidence pertaining to loss.

During cross-examination it was put to the claimant that he had not signed a new contract in March 2009 but rather a commission agreement document. The claimant replied that the commission document was linked to his contract and was extremely important as it gave him a mandate to work for the respondent.

The claimant stated that some sales for Entity E were incorrectly factored into the balance sheet of the UK based operation. It was clear that Entity E was losing money on the balance sheet but it was agreed by senior level management that this would be allowed until the Irish-based operation was fully in place. The respondent had secured a lot of business from two large companies and the claimant was busy with this work up to the end of June 2009.

The claimant did not seek alternative work, as he was aware that the other entities were also affected by redundancies.

A witness on behalf of the claimant told the Tribunal that he was employed by the respondent from 2002. The claimant was employed by the respondent to carry out work on behalf of Entity E. The claimant's contract of employment was with the respondent and the rules and regulations followed during the employment were those of the respondent. The witness held the position of Managing Director with the respondent from 2005 to March 2009, until he was made redundant.

He was aware of the losses suffered by Entity E. The charges between the respondent and Entity E were on the high side. This could be sustained during 2007 but not in more difficult trading conditions. However, the product being sold was a software product and therefore it was acceptable that it had a longer sales process and that there would be losses in the first couple of years of trading. The fact that it would take some time to fully develop the Irish operation had been discussed at the outset.

The witness recalled that when the claimant signed the commission agreement document on 2nd March 2009 he was concerned about not meeting targets. The witness told the claimant that as far as he knew there was no immediate danger. It was later that the witness was informed that the Irish base of Entity E would be closing.

Determination:

The Tribunal is satisfied from the evidence of both parties that a genuine redundancy situation existed in relation to the termination of the claimant's employment by virtue of the fact that the entire Irish-based operation of Entity E ceased to exist. The Tribunal is satisfied that the procedures used in both informing the claimant and providing him with sufficient notice were fair. Therefore the claim under the Unfair Dismissals Acts, 1977 to 2007, is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)