**EMPLOYMENT APPEALS TRIBUNAL**

| CLAIM(S) OF: | | CASE NO. |
|---|---|---|
| EMPLOYEE | *claimant* | UD1823/2009 |
| against | | |
| EMPLOYER | *respondent* | |

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. D. Winston
Ms M. Finnerty

heard this claim at Dublin on 2nd November 2010
and 21st March 2011
and 22nd March 2011

Representation:

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Claimant(s): Mr. Oisin Quinn, SC instructed by O'Mara Geraghty McCourt, Solicitors, 51 Northumberland Road, Dublin 4

Respondent(s): Mr. Paul Fogarty BL instructed by Mr. Michael Kavanagh L K Shields, Solicitors, 39/40 Upper Mount Street, Dublin 2

The determination of the Tribunal was as follows:-

**Claimant's Case**

Counsel for the claimant outlined to Tribunal that the claimant is a solicitor and he gave a detailed account of his career to date. He commenced employment with the respondent in January 2004 in the Litigation Department. The Head of Litigation was EB who was a senior partner and the other two partners were HG and MK. He spent his entire employment in the Litigation Department. In 2006 discussions took place regarding the claimant becoming a partner. In May 2007 he became a salaried partner. He still received a salary as an employee and was entitled to be in the pension scheme. He was entitled to a bonus as a salaried partner and he had the opportunity to get a bonus. He had no right to vote.

His brother and sister in law LF had a problem with a house they were building. A dispute arose between their builder and their architect. The claimant spoke to EB about this. The claimant prepared letters but did not post them. The claimant posted the letters in May 2009. EB was

unhappy about this and on Friday 29 May EB looked at the file, he saw the letters January/February 2009 and he was of the view that they were sent out. On 29 May 2009 a heated conversation took place between the claimant and EB.

**Claimant's Case**

The claimant outlined to the Tribunal in detail his employment history prior to taking up employment with the respondent in January 2004. He worked in the Litigation Department and reported to EB. He was given six-month reviews and given appraisal forms, which he completed and returned to the department. HG and MK were senior litigation partners. In 2004 HG was managing partner. In 2006 he thought about his role in the respondent and the next day he contacted HG. He met HG in October 2006 and he felt he was doing well. The claimant wanted to know where he stood. HG told the claimant that he would speak with the partners and revert to him. The claimant felt that a realistic target would be Christmas of 2006 and HG told him it would happen in 2007.

In May 2007 he had a review and his performance and figures were fine. He raised the partnership issue and the claimant stated that if he was not made a partner that year he was out of the respondent. He felt there was no point in remaining with the respondent if he was not a partner. He left the meeting and prepared a submission document for consideration by the other partners. He was complemented on this document and it was agreed he would be made a partner. He was given a draft copy of the partnership agreement. He looked at it and HG referred to the claimant as a salaried partner. He was delighted and he understood that he was not entitled to part of the profits. At no stage would he have any exposure to risk or loss and he was entitled to profits on a fee earner bonus scheme. He believed a life assurance scheme was in place, which would be paid to his wife if he died.

He knew he was a salaried partner and that he could not wind up the partnership or vote. The office manager was responsible for professional insurance. He had to sign with the Law Society every year. EB, HG and MK monitored the claimant and his performance was reviewed every six months and not every three months. His drawings were lodged to his bank account and the firm would pay the balance to him.

HG and MK made the decisions. In 2008 his brother and sister in law LF were building a house and encountered issues with the builder. He did not bring this file with him when he set up on his own. He spoke to EB about this matter and outlined to him that his brother and sister in law were having problems with their architects. EB told him he had not thought about it further, he told him that they did not have a great case and the claimant was of the opinion that EB knew nothing about the file. He telephoned EB about this and he had draft letters ready to go. The letters were not sent out. He met his brother after this and told him there was a problem with EB. The claimant told his brother that he would talk to EB again. He telephoned EB on 18 May 2009 and he told the claimant he had no difficulty with him dealing with the file. He had an expert report and EB suggested that he get his brother and sister in law to a meeting. He thought he sent letters on May 2009 to the architect and to the builder.

In 2008 while he was on holiday he received an e-mail, which indicated that due to the economic situation he must take a reduction in pay. The next day he contacted the respondent and was informed that all partners had to take a salary reduction of ten per cent. He was called to a meeting with HG who told him he was looking for a reduction of €7,900 and not €5,900. HG told him the reduction was twenty four percent and not ten percent. HG could tell that he was stunned.

e could not understand this reduction of 24% and he felt he was one of the people of any use to the respondent. He agreed to a temporary reduction in salary and he would be paid back at the end ofthe financial year. The next week he met with EB and he told him he was incensed. He was ongood terms with EB at this stage.

In February 2009 he met with a doctor who had set up a practice in medicine. The doctor asked the claimant if he had thought of setting up on his own. The claimant told him not yet and the doctor told him that if he set up a business that he would come with him. The day after the meeting with the doctor he received a call from another client who had heard that the claimant was leaving the respondent, this was a joke. After this he was on a four-day case in a country location. When he returned EB told him that he heard that he (the claimant) was thinking of leaving. The claimant told EB that he had thought about it as he was under too much stress. The claimant told EB he could earn a lot more elsewhere due to the 24% reduction in salary but he had no intention of leaving. He told EB that he wanted to be made a partner and EB told him not this year. The claimant thought he deserved it but EB told him he did not think he deserved it. EB agreed to think about it and he had a number of discussions with EB over the next few weeks. He told EB he did not want to leave.

The claimant was very busy and he requested help. SOC, HR told him that employee R was going to work in the property department and that the claimant did not have enough work for R. He informed HG by e-mail that R was moving to the property department. HG responded to his email and asked the claimant to meet with him. The claimant told HG he needed support as he was working every weekend and he could not continue and HG raised about the claimant leaving. The claimant wanted to know where he stood.

On 18 May 2009 he sent out letters and it was agreed that he would act for his brother and sister in law and a meeting was arranged. He received a response by fax on 27 May. He received a call from EB and he asked him who TD was. He told EB that TD were his brother and sister in laws builder. EB referred to him having sent the letter and EB told him that he had defied him and the claimant told him he thought that he could send the letter. A heated argument ensued and they both criticised each other. The claimant told EB that he took the rap for mistakes and that the respondent had a culture of blaming everyone else for its mistakes. The claimant told EB that his brother and sister in law were coming in and he said he would ask for the file. He told his brother that this was getting to be a problem. The claimant told EB that he had plenty of friends in town that would deal with the matter and he did not want to fall out with EB. He told EB about this on Friday 29 May 2009 and he left at 4.15 to take his wife to an appointment. He received a call from EB who told him that he had defied him. They had a lengthy conversation and they shouted abuse at each other. EB told him if he continued to defy him he should not come to work on Tuesday.

He reported to work on Tuesday 2 June 2009. He was summoned to a meeting at 9.30a.m and there was no telephone conversation prior to the meeting. Present at the meeting were EB, HG and SOC from HR. EB had the file, which he referred to, and he told the claimant he had sent the letters in February 2009. He told EB he had the wrong end of the stick. He assumed the unsent letters were on file. EB called him dishonest and that he had a weakness of character. He always said that the claimant defied him and he told EB he had not. EB opened the file in front of HG and stated that it should be sent to all the partners and that the claimant may or may not be copied with the e-mail. SOC took notes, which he sought, but he was not given them. After EB put the file down the claimant stated that if that was the basis of getting rid of him that was crazy. The claimant felt that that he was finished with the respondent after his falling out with EB. A meeting took place at 4.30p.m. on 3 June 2009. He was told that a decision was made that he would leave the

partnership. The claimant stated that he was an employee and EB said that they all knew he was a salary partner. He stated that they had no basis to dismiss him and EB said that they did. The claimant stated that if this were the case he would sue them. He said to EB that he presumed he would get the reasons as to why he was dismissed and EB said that he would. EB asked him if he had work on for the next day and the claimant told him if he had that he would not take the following day off. He presumed that the reasons for his dismissal would be e-mailed to him. .

The claimant stated that he did not want the office to know he was dismissed and he assumed that the respondent would maintain the status quo. He asked for the minutes of the meeting the previous day and he was informed he would get them. As far as he could recall no one took notes at this meeting. He went to a meeting again on Friday. He received a call from his secretary, she was upset and she told him that EB asked her about him leaving. He contacted HG and told him that he could not believe that EB had done that. He asked could he not keep EB on a leash and he hung up. On Friday 5 June 2009 he met with HG and EB and he had not received an e-mail to inform him he was dismissed. This was the first matter he raised and EB told him that he was not dismissed and that he had not time to prepare it. EB told him that he would not want to get it and he would not like the contents. They discussed what the claimant wanted and the claimant told them that he considered himself dismissed. EB told him that no one considered that he was dismissed. EB told him that he could take it that the claimant was constructively dismissed and they had discussions without prejudice. He told the claimant that there was no basis to get rid of him. He thought they asked him had he legal advice and he had not at that stage. The meeting ended and the claimant agreed to stay on until the end of June.

At the meeting on Friday 5 June he asked why he had not received a letter explaining why he was dismissed. EB told him he had not the time to prepare it. EB told him in any event it was not in his interest to get the letter, as he would not like the contents. He requested the notes that SOC had taken at a meeting on the previous Tuesday. He received an e-mail from EB on Friday about the handing over of files. The claimant reported for work on the following Monday and he noticed that his desk was gone through. He advised HG by e-mail that he was not happy about this. HG informed him by e-mail that he knew nothing about his desk and he was happy to meet with him either that day or the day after. The claimant e-mailed him that he wished to go ahead with the meeting on that morning. HG was in the meeting room when he arrived and EB was not. EB arrived and HG told EB that he had nothing further to say to them. A discussion ensued as to whether the claimant had obtained legal advice and he indicated he had. EB told him he did not think that there was any problem with him going through his desk.

Termination dates were discussed. He had a number of cases that were ongoing in June leading into July 2009. They would review the date of leaving at the end of June. There was some discussion about him remaining until end of July. He raised issues as to why he had been dismissed. EB told him that no one had told the claimant he had been dismissed. EB then said to him that he could take it you were constructively dismissed. HB suggested that his solicitor make contact with him. When he made reference to the fact that he was seeking legal advise and the fact he believed he was an employee EB told him the respondent was going to sue him for some of the clients he had brought in and some of the work he had brought in. EB told him he had made numerous screw ups and he mentioned one particular file (Castlebar) which he had screwed up on and he acknowledged that he had screwed up on this file.

He had agreed to do an orderly hand over of his files and there were e-mails going around to colleagues about him transferring his files. He did not know what other solicitors in the respondent were told about taking over the files. He spoke to EB and HG about how that was to be managed

and it was packaged that if he did some kind of settlement with them and did not sue the respondent that they could agree on something It was on the basis that the money in his capital account and bank salary that was due would be paid if he did not sue the respondent. The first time the claimant saw a partnership agreement was at the Tribunal. He told EB on 3 June he thought he was an employee and EB told him that they all knew there was ambiguity about the salaried partners contract.

EB told him he was dishonest but he did not know if the other partners were told this. He was told by EB that there had been a meeting on the 3rd June at lunchtime when the senior equity partners had made a decision that the claimant was to leave the partnership. He had no idea about this and he still did not know whether in fact a meeting ever took place but he was not invited to it. There was no response to his solicitor's letter dated 17th June and his solicitor again wrote to the claimant on the 30th June 2009. A response was received on 2nd July to letter of 30th June. The claimant's solicitor was told that he had not been informed he was dismissed or expelled or that he had been treated with dismissal or expulsion. The claimant believed that this was untrue. The claimant set up his own firm after this but at the time he was attending interview with other firms. He had at one stage contemplated establishing his own company. He reiterated a conversation he had with a friend about setting up on his own and this was repeated to the respondent. EB told him he was leaving and he told EB that he was not leaving but that he had given some thought to leaving as he was under huge pressure and had a massive workload. He was very upset that his salary was reduced by 24% and he told HG about this. He was getting on very well with EB at this time and they discussed the matter and EB told him he would prefer if the claimant remained with the respondent and that was the end of the matter. His employment ended on 31st July 2009 and he never reached an agreement as to what was to be said to clients or solicitors.

He established his own firm on 4 August 2009 and his secretary went with him. He had some discussion with EB regarding his secretary. He made a loss from August to December 2009. He started making a profit from September 2010. Between August 2009 and August 2010 he did not make a profit or have an income from this firm. His final salary with the respondent was €121,500.00. He set up a direct debt and he thought he drew €6,600 per month. He believed he should have been paid a bonus, which was capped, at 40% of his salary. He was paid an advance payment of €2,000 bonus for 2008 around June. If he had remained in employment in 2009 he believed that he would have done better in relation to his bonus. He should have been paid his bonus for 2009 in June /July of 2010.

In cross-examination he stated that he thought his financial year was from December to December and then he stated that he did not know. He did make a tax return. He was of the understanding that his dismissal was a result of his involvement in the LF file. He was never communicated anything differently. He agreed that certain matters had to be completed before solicitors accepted a client. A section 68 letter warned clients of the cost implication of taking on a case. He agreed it protected the solicitor and the client at an early stage regarding what was involved in litigation. One of the first things that the Law Society looked at as part of an inspection was the Section 68 letter and he agreed it was a statutory requirement. He agreed that not to send a section 68 letter could possibly be perceived as misconduct. The first thing the Law Society did was to ensure that the accounts balanced and he stated that Section 68 letters are not at the forefront of their mind. He agreed that it was misconduct not to send a section 68 letter. There was a specific litigation division within the respondent and a file had to be cleared before opening. The claimant was aware of this. Before he took on a different file he sent around a conflict search. If he got a new instruction on something he would usually run it past EB, MK or HG and in certain circumstances he would send around a conflict search and if no one came back with an objection he would go and

open the file. He did not go to EB with every new file to obtain permission to act on the file. He did not know that he had to have clearance from EB, HG and MK (Litigation)

He would not agree that for every file he opened that he had to obtain clearance. If for example a solicitor in the competition department or business department told him that they were meeting commercial agents he would not go to the Litigation Department to ask permission. He would take it as a given because he would have assumed that the solicitor in competition would have completed the conflict search. If he got a new file he would send a conflict search. He could not say that every file he opened that he discussed it with MK HG or EB. He was sure that he had opened a file that he did not mention to EB. He contacted EB regarding the LF file (his sister in law) to establish if he could act for them. The accounts department generated a list of new files, which were opened and circulated at the end of the month. He was not aware that he had to discuss every new file he opened with the partners in the Litigation Dept. A conflict search was sent around in relation to an unfair dismissal case against a charity, which he represented. The Head of business GH told him that he had some connection there. Everyone was aware he was dealing with it and no one had any objection.

He was out to dinner with his wife and brother and sister in law in December 2008. He was aware that they were building a house in Wicklow where his sister in law is from. He became aware that they were having difficulties with the house and progress was not going ahead as planned. They asked the claimant if he would act for them and he agreed. He told his brother that before any decision could be taken he might engage an expert to compile a report. He could not recall if they told him that they had an experts report. The first he knew that his brother and sister in law wanted him to act on their behalf was in December 2008. He did not open the file until May 2009. He did some drafting in January 2009, he contacted EB and he asked him if he could act for his brother. He got the impression that EB did not want him to act and that is why he did not open the file. He made his brother aware of that. He told his brother he could not act for him in March 2009. He could not recall what date he spoke with EB in January or February. EB never told him that he objected to him taking on the case. He could not understand how EB would think a letter marked draft was sent. He contacted EB on 2 February and he had the letters ready to send. He asked EB if there was any problem in him acting for his brother in law. He knew that EB had an issue with him acting. His secretary put the carbon of the letter on file and when EB took out the file in May he believed that it had been sent out. His secretary thought the letter had been sent and he had held back the letter after talking to EB. The client was now identified as LF. The reference on the letter referred to another client. He did not contact accounts as they would have opened a file and he had not spoken with EB about this. He agreed he bypassed the system. He did not maintain any record of attendance on this file. He believed that the first conversation he had with EB was on 2nd February. The next time he had a conversation with EB regarding this file was in May.

He did not believe that he had seen this document and he did not know it was on the file that EB took to his office. He saw the date of the letter at the last hearing. The letter from February was not on the documents he received. He could not understand how a letter with a date of 28 April 2009 could be on his file. He prepared two letters to go to both the architect and the builder on 2nd February 2009. He did not know how the date of 28th April 2009 came to be on the letter and he could not understand how this letter was on the file. He did not know why the letter of 28th April 2009 was sent out as a reminder letter in respect of the letter 2nd February, all he knew was that the first letter sent to the architect and builder was dated 18th May 2009. He agreed he sent the letter dated 18 May 2009. It was the same letter as that dated 28th April 2009.. Apart from the claimant and his secretary no one else worked on this file.

He again contacted EB in May 2009 and he told him that his brother really wanted him to act on his case. He told EB his money was as good as anyone else's. He told EB anyone in the firm could act for his brother and that they would have a meeting with his brother and sister in law. He accepted that he did not obtain EB's authority to send the letters. He went to account to open the file, his secretary did it the same day the letters were sent. His secretary would always open the accounts... The letter he sent out had the incorrect number as it had not been opened. He did not ask his secretary to ask accounts to obtain a reference until he spoke to EB. He told his brother in March 2009 he had a difficulty acting on the file so that was the reason he went back to EB. He had not told EB that he had sent the letters. He agreed that a week later he told his secretary to open an account. He agreed that at that stage he had not complied with a Section 68 letter. His secretary was instructed to open the file on 26 May and he believed she did.

He did not know if he was entitled to nominate his financial year and he assumed he could. By choosing December 2009 he did this from the point of view of doing his tax returns for 2009. His biggest expense was client outlay of €33,801. He agreed that solicitors often paid out for clients but recovered it from clients as well as this was part of the process. He agreed that client outlay would ordinarily be an expense unless he was to write it off. The biggest fee he generated in 2010 was for €40,000. He raised the invoice in January 2010. He received approximately €50,000 in fees in the first three months of 2010. He did not reach an agreement in relation to fees on some of the accounts with the respondent.. There was a dispute as to whether there was an agreement to pay €80.000. He did not receive the money that was payable in respect of the respondent work. His clients received a settlement in respect of the proceedings including costs. He did not settle the costs for both the respondent and his own firm. After the settlement had been concluded he contacted EB and offered him €40,000 of what he considered to be his client's money in settlement and he refused that. He did not believe that he received €50,000 he thought it was €45,000.

From 1st August 2009 to December 2010 he was living on money his brother loaned him. Fees receivable did not mean that he received cash as of December 2009. Returns submitted for his own practice and the respondent were on the basis he was self-employed. He paid tax on the basis he was self-employed in the respondent. The issue regarding whether he was an employee or was self-employed had not been clarified. He completed a tax return for 2008/2009 and he would as far as he could recall have done one for 2009/2010. He completed two tax returns since he left the respondent and ticked the box with an expression of doubt on both occasions. He then stated that there was no expression of doubt for 2009.

His brother prepared the returns for 2008. Regarding counsel Mr.McE he thought he e mailed the letter to him. He could not recall when he sent Mr. McE papers. He never mentioned to EB about having met with Mr. McE. He reiterated that he did not send out a letter of 2nd February or 28th April. He sent out letters dated 18th May 2009. The meeting with counsel Mr. McE never took place. When EB received the letter from MH and C he telephoned the claimant and asked him who was T D. He told EB it was one of the clients on the LF file. They had an argument on the phone regarding this. EB knew the letter had gone out when he telephoned him and he was not happy about it. He subsequently told his brother that he was not happy the way things were going with EB. He then telephoned EB the next day and informed him he had spoken to his brother and it was not a good idea and he had recommended his brother to go elsewhere.

He did not know what EB saw on the file as he had never seen the file again. He received a call from EB on Friday afternoon. He told the claimant he was not feeling good and he had the LF file, he told the claimant it had been active since February 2009. The claimant did not keep

timerecords as there was no file opened. He opened the file in May 2009. He had never seen letters from April. He had the mistaken impression that EB was under the impression he had sent the letters in January or February because there were carbons on the file. EB told him that he had defied him and not to report for work on Tuesday. The conversation ended on the basis it was notEB's decision to make whether he should report for work on Tuesday or not. He reported for workon Tuesday and received an email from EB that he was to meet with him and HG and there was nodoubt that the LF file was going to be discussed. He reiterated that he was not aware of the letter dated 28th April 2009 until the hearing. He then accepted that this letter was on the file the lastday of hearing. He stated it was not a document that was drafted by him. SOC, HR was alsopresent at the meeting on Tuesday 2nd June 2009. EB told him that he had defied him. He thoughtthat he had the go ahead from EB on 18th May to send the letter. He inferred consent from the factthat EB did not say anything about the letter. He realised he was not going to have a job once hehad spoken to EB on Friday evening. EB told him he had a weakness of character and dishonest. EB told him that he called him a prick and if he did so he apologised to him for it. When asked ifhe could continue to work the following day in the same environment he said it was up to EB. Hewas informed that it was to be a meeting of senior partners. He was informed there was a meetingof the senior equity partners the following day and he was to leave the partnership. He was invitedto a meeting the following day. The claimant had nothing further to add. They spoke eventuallyregarding him leaving and handing over his work. He did not know what the other partners wantedto do regarding the situation.

He was an employee in the respondent and he wanted to become a partner. Anyone looking at the letterhead would assume he was a partner. When he made his returns to the Revenue he was identified as being self-employed. He agreed that in all of 2009 he was self-employed but this was an issue about the expression of doubt. The one tax return he completed in 2007/2008 he was self-employed. He was on a salary of €120,000.00 per annum. He received a certain amount every month and the balance was retained by the respondent and at the end of the year he was asked tosign a tax return which he did and the respondent wrote a cheque to the Revenue Commissions forthe money they had held back to pay tax. There was a capital account, which was the balance ofthe tax. He accepted he had health insurance with the respondent and life insurance. When he wasmade a salary partner he received a P45. He believed he was added to the signatories in relation tothe bank accounts as well. He accepted that partners had an obligation of mutual trust to eachother

Clients were charged by the hour. At the end of each day you would clock in your hours and he did it as he went along. This was on his PC screen. If he had to go to court for an injunction he would not set up the file and start recording the hours. He would draft the paperwork when he arrived in court to get the injunction. He agreed that he had not maintained a time record except in his head. He had a fair idea of how much time he had spent preparing a ledger. At the meeting on 5th June 2009 he was asked if he obtained legal advice and he had taken advice. He had a good working relationship with EB before the disagreement in May 2009.

Once he was told he was dismissed he assumed that he would get something in writing to say he was dismissed. He never received that and he raised it at the meeting on Friday. He was told that they did not have the time to prepare it. He accepted that if he did not maintain proper attendance that he was exposing the entire partnership to the risk of liability. The reason that there was no attendance record in the LF file was that from January to May he had not done anything with the file and he accepted that his secretary kept the carbons of the letters, which he had not realised.

In re-examination the claimant stated that when he started working with the respondent the

post used to come in and initially it was opened by one of the secretaries at reception. It was in pigeonholes in the post room and the boxes were brought into the post room. There was a separate pigeonhole in litigation. Someone from litigation would collect his letters and bring it to the Litigation pigeonhole, which was outside EB's room. EB told him that he had often gone through solicitor's desks and he did not see a problem with it. It would be appropriate for EB or HG to undertake a routine check of correspondence in the litigation department. The LF file was in his room and could find this file easily. He knew the letter dated 27th May 2009 had come in by fax as he saw it in the fax machine but he left it there. EB would have been entitled to concede on 27th May that the claimant had deliberately breached an instruction from him. His conversation on 27th May ended with an arrangement that his brother and sister in law were coming in the next day and they were all going to meet. HG or EB never told him they were shocked to find an absence of proper attendance on this file.

MS told the Tribunal that he was an accountant and acted for the claimant's firm since it was established in August 2009. He prepared the profit and loss accounts and the tax returns for his firm. The claimant had completed two tax returns since establishing the practice. One was filed the end of 2009, which was the 2008 tax return. One was prepared for his new practice in November 2010. The first set of accounts was prepared for the period of 2009 from 1 August to 31 December 2009. The accountancy firm made the suggestion that 31 December would be the year-end from a tax planning point of view. The report was based on the employment agreement, which the claimant gave to him, which he held with the respondent after he was appointed a salaried partner together with a detailed examination of his records, banking statements, to examine the monies still due to him from his employment that had not been paid. His report dealt with the period to end of 2009. He had not prepared the accounts for year 2010.

The fees receivable of €64,654 reflected the amount that the claimant invoiced his clients inclusive of outlay. To measure the fees correctly the outlay needed to be separated from it and that was shown as a disbursement. The amount of €40,084 was both for outlay and fees. €64.000 did not represent cash or money recurring during that period. The claimant was entitled to €30,853.00 for his professional fees and expenses. The outlay was €33,801 and the two amounted to €66,654. The accounts showed a loss for the five-month period. Capital introduced represented cash, which the claimant procured to get his practice started and to pay for his initial costs.

In cross-examination he stated that €64,000 was fees plus outlay payable to counsel. The claimant had to show his client full information when he issued his fee note and he showed him the invoice of the fees that his counsel had sent to him. The claimant put his counsel fee on to the invoice that he raised. He did not do VAT returns for the practice. He was happy that the VAT he had returned was the VAT he had charged on his fees.

He was asked to prepare the accounts and file the tax returns for 2009 during the summer of 2010. He was asked to produce the report last week. He used the information available to him in the office, which were the accounts for the period ending December 2009 and the records available relating to the drawings he received from his salary. He had no information regarding events in the early months of 2010.

EK on behalf of the claimant told the Tribunal that she was the managing partner of the practice that MS worked in and she provided accountancy services to the claimant's business. The claimant's practice was established in August 2009. For the first twelve months the claimant made a profit of €35,818.00

In cross-examination she agreed that there was a figure in excess of €206,000.900 shown for fees receivable. She agreed that the figures for the first five months were €30,000.00 and it was €175.000.00 for the remaining seven months. Her company had been doing the accounts since thestart of the claimant's practice. The figures for receivables were based on cash receipts on invoices. The first figure in the current assets was debtors of €39,985.00. That was money that was dueand had not been paid. A high proportion of this figure was outlay that had been incurred on behalfof clients. The second largest single list of expenses was legal and professional fees.

When preparing the accounts she did not take work in progress into account. Work in progress was normally never put into the accounts. It was not always the case that works in progress was part of profit. As soon as a job was done it was invoiced for. A figure of €78,000.00 was shown in the Capital Account. This was not shown as a debt. It was money put into the practice as a loan and taken back out again. She agreed that the profit was income minus expenses. The claimant wasable to take €100.000 drawings.

In answer to questions from the Tribunal she stated that the claimant's business made a net profit of €51,240.00. This represented a period of seven months

**Respondent's Case**

EB told the Tribunal he was one of three solicitors who founded the respondent in 1988. He was head of litigation department and a member of the senior team. He is a risk partner as well as a manager in risk outside of litigation. It is a statutory requirement that a Section 68 letter is sent to any client. In recent years audits are more rigorous that they used to be. He supervised a good deal of the claimant's work and he would keep an eye on compliance and risk issues. The respondent had to know what was happening before it could take a view. Section 68 letter informed clients about the cases and this was estimated by hourly rates. The Law Society placed high importance on the absence of Section 68 letter. The client frequently did not understand what legal advice he needed and the respondent's task would be to make an informed decision. Money laundering would arise A conflict search was vital as Dublin is a small place and the bigger the firm the larger the contacts. You could be asked to act on cases and you would be already acting for the people who want to sue. A solicitor who opens a file should send an e-mail to all solicitors and the accounts department. . Every solicitor receives this and he had to establish if he knew people and if there was a possible conflict. A conflict search meant that there was a high level of visibility.

Client selection was at the core of the business and it was all about risk. Various factors were taken into account when deciding on a client, one was in credit risk and the other was value. The position was to establish if it could add value for the client based on what it charged. If a client had a dispute over €100,000.00 or €200,000.00 and this was probably not a large enough sum for the respondent to deal with. Some cases would go to solicitors who would charge less fees. He needed to know if someone wished to be a client and a decision had to be made to take the case or not. The first time LF was aired was when he received a letter from MH&C and referred to a development company. (TD). He had no knowledge of any such client. He would not disagree with the claimant if he told him he had a conversation about this matter in January or February 2009.

The claimant told him that his sister in law LF and brother had encountered a problem with their architect and builder. He raised issues about the file and the claimant did not tell him he had already agreed to act before 2008. and that he had already taken on the case. He was concerned that the claimant would not charge proper fees due to the family relationship and the claimant told

him that their money was as good as anyone else's. His issue was that what the claimant was going to charge the client fell hollow in his view. If the claimant did not record the time the value was lost. The reason that contemporaneous time records were maintained was for accuracy. The claimant decided that he was not going to create time records and he was very critical of that.

The claimant was a hardworking and capable solicitor. The claimant had a problem with his workload and he was trying to manage and support the claimant. Rules had to be adhered to when opening a file and time recording should be contemporaneous. The respondent had an absolute rule that instructions or advice given must be subject to written attendance. The hour was divided into ten units of six minutes. When a client telephoned the office the clock was turned on and the time should be recorded. If a solicitor had to deal with an injunction the time was recorded when he returned. Time was lost if you did not document it. If an attendance file were not in place no one knew what the instruction was. If you are taxing a file and if you have not got the attendance to file to inform the taxing master of the activity you undertook he would not pay you. There is also a risk of not doing something that you said you would do and the respondent was liable for the breach of that promise. The claimant was aware of the risk of not having records on file.

He was less than happy with the outcome of a discussion he had with the claimant in January 2009. The claimant wanted the go ahead to act and he told him no. The claimant understood that he was not to take on the case and he did not have a discussion about letters. The firm grew and more work came along in litigation. No one opened a file without discussing it with the senior partner. The claimant was unhappy that he did not agree to take on the LF file and they discussed it at some length. He felt the claimant had not looked beneath the surface of the file. The claimant was really anxious to take on the file. Work on building contracts was messy and were difficult and expensive to defend and were high maintenance. The claimant would know that experts proved most of the issues in these cases. The claimant maintained that he called him in May 2009. He did not disagree that it was the 18th May 2009. He did not make a list of instructions that he gave to junior partners. He expected that if solicitors agreed to undertake a job that it was completed.

The claimant again contacted him and told him that his brother and sister in laws house was half built but he wanted the respondent to take on the case. EB was still unhappy and the claimant did not tell him that he was issuing letters of demand and that he had taken on the case. The claimant mentioned the Castlebar case in February 2009 and he had made a mess of it. The claimant and EB had a good relationship at this time and he was trying to encourage the claimant to make the right decisions. He had reassured the claimant that the rumours that he was leaving were finished. He was trying to be kind to the claimant. He told the claimant that he would meet his brother and sister in law and evaluate the case. He did not make a note but he trusted people. He would go to the post and distribute it to troubleshoot and he needed to establish what problems were emerging. He noticed on one account that a different client was entered and he did not know what to think. He contacted the claimant and only then the claimant told him that he had referred to LF in earlier conversations with him. He told the claimant that that they had agreed to meet and that the claimant had changed the arrangement and he was now acting for them. He was very unhappy with the claimant, the claimant maintained that he called him on Thursday and EB was bewildered. The claimant and EB had a very good relationship at this time.

The claimant told him he had agreed to act for his sister in law and brother and he had sent a letter of demand. He felt that the claimant just did not get it. EB could not see how he and the claimant had a clear arrangement and the claimant took it over his head. EB did not know what to do and he was very concerned about it.

It was the bank holiday Friday on 29th May 2009 and he was very concerned. He decided he was going to sort it out. He telephoned the claimant and the receptionist did not know where he was. He asked the claimant's secretary for the file. He discovered a letter of claim dated the 2nd February 2009. He then began to join the dots, the claimant had asked him in January and now he established the he opened the file without telling him and this was serious. He had trusted the claimant and he was very angered by this. He read the file on the bank holiday Monday and he noted some more drafted letters. The claimant had already been acting on the file.

He contacted the claimant and the claimant asked him how he was and EB told him that he was not good. EB told the claimant that he had defied him, lied to him and that he felt betrayed by him. He told the claimant he had been acting on the file since February 2009. The claimant told him he was a p…. and that he did not like him. He was head of the department but the claimant was not interested, he was abusive and the claimant felt he had done no wrong. EB told the claimant he did not care if he was not coming in to work on Tuesday. The abuse was secondary; the fact was he had concealed the file from him. The claimant told him on Wednesday that his brother and LF were going to another solicitor. When a file went to stores the file had to be reviewed and ensured that there was nothing left outstanding on it. If there was no record of disengagement it was a risk and ultimately he got the claimant to obtain a disengagement letter.

He wanted to meet with the claimant on Tuesday. Before the meeting he went to HG and they agreed with SOC, HR manager that they would ask the claimant to meet them to try to sort out the matter. He sent an e-mail to the claimant. . At the meeting the claimant did not want to talk about it, he could not seem to understand that to take instructions without approval was wrong. He did not put the file under his nose. He tried his best to get through to him; he had a closed mind on it. He could not work out what was going on. He did say that it was his view that the claimant should be invited to leave the partnership. The claimant was never dismissed or expelled. EB told him he was leaving the firm but they wanted to do it in a way that protected his interest, the respondent's interest and the clients' interest. The respondent wanted him to leave with dignity by resigning and to do it at a time and in circumstances where everybody's interests could be protected to the extent it could. He did not want to come to the Tribunal and state things in public. He did not want acrimony. He was at pains to say to the claimant he was not dismissed. The respondent made it clear they did not want him to be in partnership with them and the claimant made it known to the respondent he did not want to be in partnership with them. The claimant made a proposal that he would remain until the 30th June 2009. He felt that the end of July 2009 was a natural break and he proposed that to the claimant, which he agreed to.

He did not produce the letter of 28 April 2009 and he could not believe he was accused of falsifying a letter and this was a strong allegation for the claimant to make. The letter purported to be sent by registered post. This appeared to have been sent to Counsel by the claimant. It was almost unheard of in the office that a client does not get a copy of all letters relating to the file. The majority of solicitors were fastidious about the way they communicated. When dealing with relations he felt that sending letters of advice might be regarded as less than subtle. He did not know what the claimant said to the clients. The clients did not get a screed of paper. According to the file the client was not looked after and he would be surprised if he had met with LF and her husband that they did would not ask some questions. It was an absolute no no for the claimant to use the account reference from another client. This could only have had the result of misleading people. He did not know why the claimant used that file. File numbers were used so that the respondent knew what happened on the file. This letter was not going to show a LF file. He could not understand why the claimant used that file number.

On 26th May 2009 an e-mail was sent to Counsel Mr. McE. The claimant acknowledged that the letters he accused the respondent of falsifying were his letters. The claimant sent a letter on 28th April 2009 and he informed the respondent that it was never sent. When he met the claimant on 27th May 2009 he was not informed that Counsel had been briefed the previous day. The meeting with the claimant's brother and sister in law did not take place. He was given miniscule information. The claimant had not retained an attendance record of what happened prior to that.

The claimant was a salaried partner rather than an equity partner. The claimant received a P45 on his last day and he became the salary partner the next day. As an employee he had a bonus entitlement of 20%. As a partner he would have a bonus of 40%. All partners in the respondent have always had a substantial amount of entitlement held back for tax and personal bills to be paid. That applied to him and applied to the claimant. The respondent had to ensure that partners did not get into financial difficulty. When the claimant was self-employed he was paid a cheque. The respondent's health insurance paid a partner for first six months of illness and after that they had the benefit of public health insurance. The respondent did not want to pay people while sick and they did not want to see them out on the street. It was a distinct benefit to all salary partners. The Law Society was notified and everyone in the office was also notified if someone was made a partner and the name was on the respondent notepaper and was given business cards. The claimant became one of many signatories on bank accounts, he could sign cheques but not on his own. The claimant had the same signing authority as he had; the claimant was not entitled to vote.

Matters were always dealt with by consensus. The claimant was involved in the appraisal of junior staff. The claimant told the respondent he did not wish to participate in the appraisal of a solicitor AM. The claimant was asked to participate in major decisions. The respondent had a staff of one hundred and twenty, an IT department, Accounts department, two receptionists, one and a half librarians and a number of people undertook different functions. The claimant was involved in all levels of decision making except in the leadership team. The claimant wanted to be an equity partner but the witness did not believe he had the capability.

In cross-examination he stated that he was the senior person along with MK and HG. The claimant was competent and hardworking but he got himself into terrible difficulty over his workload, he was not able to say no. After a period he was entitled to a bonus of 20% as an employee and 40% as a salaried partner. Between 2004 and 2009 the transactional market was in boom and litigation was a bit different. Part of his remit was not to make bad decisions regarding client selection. The claimant demanded that he be a salaried partner in May 2007. The claimant was weak on team skills. The claimant had proven skills and the respondent expected a partner to have a team around them. The claimant had poor client selection; the respondent identified it as a problem and flagged it. The claimant was happier to work as a lone ranger and they tried to encourage him to share his workload. The witness was familiar with what went on in the litigation department.

If a file was not opened no one knew about it. At the end of every month the office would be aware if a new account was opened. It was important for financial planning to establish where work was coming from and what it was going to be worth. A figure of €10,000 as a cost estimate was short of what it should be, it should be five or maybe ten times that. He sent the claimant an e-mail on 17 July 2009 regarding housekeeping. The claimant was helping him to close off looseends to hand over files to colleagues and he had to focus on a small number of files that were veryactive and this was arranged with him**.** The claimant was informed that the witness did not want totake on the LF file. He agreed that the claimant did not send the letters in January/February

2009. When he opened the files the letters from February 2009 were in the file. The first time he becameaware of this was in May 2009 and as far as he was concerned that was not a file. The situationbetween the respondent and the client was very messy. Because of the claimant's relationship withthe prospective clients he was concerned about his capacity to make a decision on this. He wantedto know what the case was about before he took it on. The claimant never told him that he haddrafted letters. He did not expect a file to exist if he did not have a client. He did not disagree thatthe claimant arranged for two letters of 18th May to be sent out. The claimant did not tell him on18th May that he had briefed counsel in the case. On Friday before the June bank holiday helooked at the file.

The claimant did not give him the information on file, which he ought to have given him. He had no knowledge that a letter from MH & C on 27th May 2009 was going to come about. He spoke to the claimant on Wednesday, this was a heated conversation but it ended civilly. He was bewildered. The claimant did not inform EB of the file and the claimant did not tell him about a meeting. The claimant had not mentioned to him that he had Counsel on the LF case. He made it clear to the clamant that he was unhappy with him. He was very vocal at the meeting on 28th May He could not understand how the claimant could have been entitled to issue a letter of claim. He then phoned the claimant but could not get him on his mobile and he asked his secretary for the file. He was angry when he saw the file and he observed that the claimant had been working on the file for many months and concealed that fact from him. He told the claimant that he had defied him and he felt betrayed. He did not know what anyone said to the claimant regarding the call. He received a mealy mouthed apology from the claimant, it was tertiary. He was very annoyed with the claimant; he had worked with solicitors for a number of years and had his ups and downs. He was capable of listening to people and well capable of having a conversation with anyone who would have a proper conversation with him. The claimant would not engage with him on Tuesday. The claimant undertook work on the file without telling him. He could not have solicitors doing that and solicitors practiced what they preached. The number of letters of demand on the file baffled him. He did not know what to think and he felt that the claimant had a weakness of character.

The claimant could not see what he did was wrong and they had agreed to do the file in a certain manner in May and the claimant went and did the opposite. If the claimant wanted to send a letter of claim he should have asked his permission. The claimant should have told him he had letters of claim ready and wanted to send them. When asked that on 2nd June he told the claimant he should be invited to leave the partnership he replied that the claimant was not given a choice. The claimant chose the 30th June to go and he felt it was better if he chose a later day. He raised the Section 68 letter with the claimant on 3rd June but the claimant was not interested in discussing the file.

Regarding the meeting of 3rd June it was an information meeting with KG and the claimant. He had no handwritten notes of KOC, HR. S.O C, HR told him the hand written notes were put on the personal file. Personal files were retained in a safe place but the notes could not be located.

He wanted to have an amicable resolution to this particularly when the claimant was under his roof. The claimant made reference to looking for a letter from him. The claimant told him he did not get a reply but he told him that the material for a reply was not something he would like to see.

**Closing submissions by the claimant's representative.**

The first matter addressed was in relation to whether the claimant was an employee. When the

claimant became a salaried partner the major change was in title and to his tax. Paying a worker a salary is an indication of being an employee. A self-employed person is not paid a salary but can earn a fee or make a profit from selling products. The claimant was a salaried partner.

He was paid a salary and the agreement by the respondent in May 2007 indicated that the claimant's annual salary was €120,000.00. That was a strong indicator of someone being an employee. As a fee earner he was entitled to get a bonus. That did not make him self-employed ashe was entitled to a bonus pursuant to the respondent's fee earner performance bonus scheme. Lotsof employees were entitled to bonuses. An equity partner shared in the profits of the respondent. That did not apply to the claimant. It stated in the Salary Partner agreement that the claimant wouldnot participate in the firm's profits or any capital or other allowance.

The claimant was entitled to join the Pension Scheme and entitled to benefit of life insurance and permanent health cover. The claimant had no right to dissolve or terminate the partnership. When he became a salaried partner from a tax point of view he switched to Schedule D which would indicate a self employed tax return but that was not a determinative. When NL was taken on there was no discussion with the claimant about it. He was not involved in the decision making process. He was never given a Partnership Agreement. He was subject to three-month reviews and extensive supervision.

He had no opportunity of profit and risk of loss. He was required to provide services. He performed business for the respondent. He did not provide any of his own equipment, premises or staff. His secretary was an employee of the respondent. He did not provide his own insurance and benefited from the respondent's insurance. He should be found to be an employee.

It was maintained by the respondent that he was not dismissed or expelled. EB told the claimant a decision had been made that the claimant was to leave the partnership and the claimant was not given a choice. There was a discussion about the actual date of termination, and about the process of handing over files. The claimant on being told this had no choice but to leave the respondent. It was clear the claimant was dismissed. The process was unfair. Prior to the meeting of 2nd June he was not told the purpose of the meeting and that he might be dismissed and that he was being accused of misconduct. He was not told he should bring a representative. The claimant worked with the respondent for five and a half years. There were no warnings for absence of Section 68 letters, or taking typed attendances or time keeping. Even if the claimant fell short of the standard expected in relation to maintaining the file there could be no suggestion that matters had escalated which could justify a summary dismissal. There was no fair opportunity given to the claimant.

EB formed the view that letters had been sent in February 2009 and that the file had been active. EB believed that he had been lied to, betrayed and defied. The letters of 18 May 2009 were written as first letters. The file was not hidden and it was not concealed. There was nothing taken off the file, destroyed or removed which indicated someone was trying to hide something. The claimant wanted to act for his brother. His brother spoke to him in late 2008. The claimant prepared very detailed letters but prior to sending them he contacted EB in late January 2009 or early February. The claimant was aware of EB's reservations. The claimant did not hide the letters or send the letters. The letters were left in the office. The claimant believed a meeting was going to be set up and he then sent the letters. The claimant's secretary was told to open a file and the letters were placed on the file.

The claimant knew that EB was going to see the fax from MH &C in May 2009. There was nothing hidden about this. EB saw it and he was unhappy. The claimant decided that he was better

off if his brother did not use the respondent. His brother agreed that the case was going to be moved. EB believed that the earlier letters had been sent. EB went ballistic and when the matter was explained there was no attempt to alter the position. The claimant went to the meeting on Tuesday with little or no notice about what was going to be discussed. He submitted that both in substance and in procedure the dismissal was unfair. Even if the Tribunal found that the claimant was an employee there was a dismissal and it was unfair either for substantial or procedural grounds.

**Closing Submissions by Counsel on behalf of the respondent**

Counsel for the respondent stated that in relation to the discussion of 2nd June 2009 the claimant was the only person who knew that Counsel was being briefed. There were draft documents and file copy documents on file. The reason for a file was to record what was happening on the file. How did anyone draft a reminder letter protesting that they had not responded to an earlier letter, which the claimant stated that he never sent. No one could produce such a letter except to deceive. It was only when the respondent faced with a very serious allegation against EB found the e-mail to Counsel that it became possible to see that he had briefed Counsel with the same letters but he had briefed them with virtually nothing else. How could someone prepare a reminder letter to someone for not replying to a letter, which the claimant said he never ever sent. This was about the concealment of activity on a file where the claimant knew that EB did not want to take on the file. The claimant decided to do work on the file and he ensured it was actively concealed.

There was nothing sent around the office that made it possible for other people to know about it. A false file reference was used. On 18th May when the letters were sent out he did not tell EB any of that. He did not tell EB that Counsel was briefed. He got EB to agree to meet with his brother and sister in law. As an employee the claimant had no right to operate a file and keep it open for months on end. If he was right about being an employee this made his conduct all the less excusable. As a partner he was in the position of saying he brought in fees and he had an interest in the outcome. The respondent might have its own views as to whether he wanted to deal with that kind of business or not.

The problem was about betrayal of trust. Between partners it was a serious breach of trust and between employer and employee it was an equally serious breach of trust. The claimant bypassed all the systems and controls and decided he was acting for his client. There should have been a date on the file and instructions. The entire file was kept under cover. To fault EB for not being aware of this which could not be spotted was a gross misrepresentation of the position. EB could not know, because of the many files that his office dealt with, what particular file the claimant was dealing with.

The fact that the claimant initiated a position by sending out the third party letters which would have elicited a result where there was a danger that other people would get to know about it appeared to have coincided with his instruction on the 26th May 2009 to his secretary to open the file. The claimant had all of five months or more to organise opening the file. It seemed to have happened with his decision to issue the letters on 18th May 2009.

The claimant did not provide any explanation as to why he could not tell EB that he had letters ready and that he intended to act. He hid it and he was not entitled as a partner to do this and so mislead the partners. As an employee he was less entitled to mislead a person who was his employer. He was not entitled to operate a practice within a practice. He bypassed all the safeguards that were there under statute for the protection of the clients that were within the

practice.

The use of a bogus reference using someone else's file reference to conceal the existence of the file and its operation right up to the point of sending out the letter of 18th May even if there was still no file opened. It took another week before that happened. When the meeting took place on 2nd June 2009 and after his reaction to the contacts of 29th May 2009 the claimant did not appear to have an insight into what he did was fundamentally wrong.

In relation to the partnership there was a change of status, which was acted upon. His position as an employee was formally terminated. He was then operating as a self-employed person. He did not seek to challenge that until some months later.

The Tribunal is entitled to look at other events, which occurred. Partnership is also a question of status. It was not just about the money. He could sign cheques, which could have significant affects within business. He was given an increased remuneration package. The claimant had no difficulty about being self-employed until he realised that it did not suit his case.

The claimant had been dishonest. The Tribunal was presented with figures for five months that were calculated to show a significant loss. Then other figures were produced and the respondent was concerned as it had a suspicion that whatever date there would be picked there would be a problem. Once they went past the 31st December 2009 different fees appeared. The fees indicated over the following months were substantially greater than what had been shown in the period 31st December 2009.

What the respondent saw in the claimant was a failure to communicate, a failure to disclose and a failure to deal honourably and a failure to give a complete picture of what took place. Anyone who picked up the file in the future was going to be misled by it. It was unacceptable as an employee and more so as a partner because more was expected from partners. Partners were supposed to share information with each other. Even if the claimant was an employee he was a person who was at the head table. He participated in meetings. The claimant has shown himself to be entirely unreliable, less than honest and deeply untruthful. Even if the client was a brother and sister in law they were entitled to expect competent, professional service and not for it to be used with documents which were meaningless. The claimant was guilty of gross misconduct.

**Determination**

The first question for the Tribunal to consider is whether the Claimant was an employee. There were two contracts presented to the Tribunal in respect of his engagement with the Respondents. The first was sent to him in a letter dated the 19th. November 2003 that was agreed by the parties to be a contract of service. The second contract was signed by the claimant on the 23rd. day of May 2007, which made him a salaried partner of the Respondent. The Tribunal noted the fact that the position indicated in this contract named him a salaried partner and not an equity partner. The Tribunal determines that there is a very significant difference between the two positions with the former position having no real input into major decisions affecting the practice or partnership because there was no voting power with the position while the latter had a real and substantial share in such decisions. It was also very evident from the evidence given by the Respondents witnesses that there was a considerable degree of control exercised by his superiors over the Claimant in the performance of his duties. It was stated that he was allowed to attend meetings of the partnership but was not allowed to vote, he was not allowed to share in the profits of the partnership and he was not responsible for contributing to make good any loss incurred by the partnership. Under clause 6

of the agreement mentioned above the claimant had no right on any account to terminate, dissolve, wind up, appoint a receiver to or over the partnership. The facts that the claimant did not challenge his status as a self employed person during his term with the Respondents or that he handled his taxes in a way that indicated he was self employed are not issues that give sufficient weight to him being self employed. The question that the Tribunal must concern itself with is not determined by what the Claimant did but rather what was the nature of the contract. The fact that his non-remuneration conditions remained essentially the same as they had prior to May of 2007 indicates that he was not self-employed. The Tribunal determines that the Claimant was an employee of the respondents and therefore has jurisdiction to hear the case.

In considering the case the Tribunal accepts that the evidence shows that the Claimant did not send out the letters in February because the only replies received by the practice was following the letters sent in May. There was no evidence produced that could indicate that the claimant sent the letters out in February. The investigation performed by the managing partner responsible for the Claimant into this matter was not done dispassionately or objectively. This affected the process to such an extent that it rendered the process unfair. The managing partner made assumptions that were later proved to be incorrect about the sending of the letters. The Tribunal determines that the respondent should have conducted a full investigation into the matter and put the facts obtained in that investigation to the claimant and allowed him a reasonable opportunity to make a full reply. The details given in that reply could then have been checked against the facts before any decision was made on the employment of the Claimant. This failure rendered the dismissal unfair.

The managing partner was correct regarding the Section 68 letter but he only put this to the Claimant on the 3rd of June the day after the Claimant was invited to leave the practice. The managing partner was also correct regarding the file being sent to Counsel in the matter, which should only have occurred after the practice had decided to undertake the litigation in the case. There was a lack of candour on the part of the Claimant in the manner in which he operated on this file within the practice in using incorrect details on the file and he should have disclosed the steps he proposed taking on behalf of his brother and sister-in-law`s case to the managing partner especially when he realised that the latter had adopted a hostile attitude to it from the beginning because this had prevented the Claimant from sending out the letters in the matter in February. For this reason the Tribunal finds that the Claimant contributed substantially to his dismissal.

The Tribunal deem the most appropriate remedy in this case to be compensation and award the Claimant the sum of €39,000.00 under the Unfair Dismissals Acts, 1977 to 2007

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)