

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

*claimant*

against

MN174/2010

UD1709/2010

EMPLOYER

*respondent*

under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. A. O'Mara  
Mr. S. O'Donnell

heard this claim at Dublin on 30th May 2011

Representation:  
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Claimant(s): Mr. Pdraig Gleeson, Beau Park Law Solicitors, church Street, Drumshanbo, Co. Leitrim

Respondent(s): Mr. John Barry, Management Support Services (Ireland) Limited, The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:-

### **Background**

The representative for the claimant outlined to the Tribunal that the claimant was informed that his position was made redundant. An accountant AW undertook his job one day a month. AW later became an employee of the respondent. This was used as a ruse to get the claimant out and employ this individual. The claimant obtained no independent legal advice prior to signing a settlement agreement. The claimant had a discussion with the MD of the respondent and this was a formality.

The representative for the respondent outlined to the Tribunal that Section 8(2) of the Unfair

Dismissals (Amendment) Act, 1993 provides that

A claim for redress under this Act shall be initiated by giving a notice in writing to a rights commissioner or the Tribunal, as the case may be

- (a) within the period of six months beginning on the date of the relevant dismissal, or
- (b) if the rights commissioner or the Tribunal, as the case may be, is satisfied that exceptional circumstances prevented the giving of notice within the period aforesaid, then, within such period not exceeding twelve months from the date aforesaid as the rights commissioner or the Tribunal as the case may be, considers reasonable.

The respondent outsourced its accounts to a firm of auditors. AW who worked with this firm of auditors undertook the financial affairs on behalf of the respondent. HR and the Accounts department also took on the claimant's responsibilities. AW joined the respondent as a general manager on the 1st November 2009 and he took on a number of the claimant's functions.

The claimant signed a severance agreement on the 25<sup>th</sup> September 2009 and this was dated the 28<sup>th</sup> September 2009. The claimant received two weeks notice.

### **Claimant's Case**

The claimant told the Tribunal that when he was made redundant he was informed that his work was outsourced once a month. He accepted this and there was no reason to believe it was untrue. He met an employee of the respondent who told him that AW was taken on as an employee since he left and he undertook financial controller duties. He established that AW was no longer an employee of his former company. He considered that AW was working full time and he felt that he should make a claim and he did so. He signed a severance agreement and he was distraught. He was made redundant. Irrespective of what he said he had no input into his conditions of employment.

In cross-examination he stated that he spoke to the MD on the 15<sup>th</sup> September 2009 about a redundancy settlement. He received payment for two weeks notice. He submitted a claim for Minimum Notice. He lodged a claim under the Unfair Dismissals Act on the 23<sup>rd</sup> September 2010 after he had obtained legal advice. He could not recall when he obtained legal advice. He was notified by e-mail regarding his severance agreement and he considered it to be a formality.

As financial controller he had overall responsibility for the financial department and he undertook work in administration and credit control. He completed returns for the companies' office. When he was given the document he glanced at it and he disagreed that he read the document. His conditions of employment were his protection. He took the view that the settlement did not fall within contractual terms.

In answer to questions from the Tribunal he stated that an assistant accountant was let go the same time that he was let go. Three employees were in the office, the HR manager and two accounting clerks. On the day he met the MD he signed the termination payment and an RP50 form. He was traumatised at the meeting with the MD and he looked briefly at the documentation. He stated a third document was presented to him on 25<sup>th</sup> September 2009. He agreed that there was no doubt in his mind that he agreed to accept a sum of money.

### **Determination**

Having heard the claimant's evidence and submissions from both parties the Tribunal determines that exceptional circumstances did not exist and the Tribunal does not have jurisdiction to hear the case under the Unfair Dismissals Acts, 1977 to 2007. The claim is therefore dismissed.

The claimant received his minimum notice entitlement and he is therefore not entitled to an award under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

