

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

EMPLOYEE *-claimant*

CASE NO.

UD2604/2009

MN2439/2009

Against

EMPLOYER *-respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms V. Gates BL

Members: Mr F. Moloney

Mr G. Whyte

heard this claim at Dublin on 24th March 2011

Representation:

Claimant: Mr Marc Fitzgibbon, Lavelle Coleman,
Solicitors, 20 On Hatch, Lower Hatch Street, Dublin 2

Respondent: No appearance or representation

Background:

There was no appearance or representative on behalf of the respondent. The Tribunal is satisfied that proper notification was sent to the respondent. The respondent company is in liquidation. The representative for the claimant told the Tribunal that he communicated with the representative for the company who is a liquidator and he was told that he did not wish to take part in the proceedings. The claim for minimum notice was withdrawn.

Claimant's case:

The Tribunal heard the uncontested evidence from the claimant. He worked as a purchasing manager and reported to one of the managing directors (AK). In February 2009 he was placed on a three-day week. The other managing director (LE) phoned him and told him that he had made a mistake on a job. He asked LE if he could check the paperwork in work the following day and LE agreed. The claimant checked the paperwork and found that the dimensions were

correct and that an original document in relation to the job had been taken.

He confronted LE and LE threw the file at him and swore at him. LE told him to “get out”. He refused to leave and asked to speak to the other director (AK). AK arrived and he tried to give AK his version of events but LE shouted over him and would not allow him to explain to AK. LE “swore over his children’s life” to AK (that his version was true). The claimant left the vicinity but stayed in work for the day.

Another day the claimant tried to explain to AK what his version and AK refused to listen to him and told him to go to LE and “sort it out like men”. The following day he went to AK again and told him that he needed him to act on his grievance. AK would not do anything. He asked AK if he would accept that he would volunteer for redundancy and AK said that he would.

A few days later he asked AK if he had prepared the redundancy papers and AK told him that he had resigned.

He then wrote a letter dated 17th September 2009 to AK, a copy of which was opened to the Tribunal. The letter stating that he was made redundant by the company. He gave this letter to AK and AK jumped from his chair and screamed at him that he had no right to He then screamed at AK asking why he was shouting at him. He then left and went back to his own office. He met the site manager.

Later AK called to his office and told him to get out of the premises and don’t return. He asked for a reason why and was told that it was because of the mistake. He asked when the mistake was investigated and why he was not involved in the investigation. He was told by AK that LE investigated the matter. He asked AK how LE could investigate it if he was not asked questions or was shown the paperwork.

Later that evening he received a phone call from AK telling him not to come back and that he was finished at the company. The following week he received a letter to say he was redundant.

He did not wish to sign the agreement and LE said he had to sign and that because he would not he was sacked because of the way he spoke to AK.

The Tribunal in clarification asked the claimant if he had asked for voluntary redundancy in the heat of the moment and the claimant explained that he felt he had no other option as they were the two senior people in the company and the MD refused to believe him.

Determination:

There was no appearance or representative on behalf of the respondent. The Tribunal is satisfied that proper notification was sent to the respondent. Based on the evidence adduced the Tribunal determines that the claimant was unfairly dismissed. The respondent company applied

no procedures in this case. The Tribunal determines compensation to be the most appropriate remedy and heard evidence as to the claimant's loss awards the claimant the sum of €46,000.00, under the terms of the Unfair Dismissals Acts 1977 to 2007.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, was withdrawn.

The claim under the Organisation of Working Time Act, 1997, was withdrawn.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

