

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD350/2010
MN321/2010

against
EMPLOYER

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. B. Glynn
Members: Mr. P. Pierson
Ms. H. Murphy

heard this claim at Roscommon on 23rd March 2011 and 14th June 2011 and 15th June 2011

Representation:

Claimant:

James Mannion & Co, Solicitors, Milestone House, Irishtown, Athlone, Co Westmeath

Respondent:

Moroney Barron, Solicitors, 13 Raheny Shopping Centre, Dublin 5

Determination

The Tribunal has carefully considered all the evidence in this case. In deciding whether or not a dismissal of a claimant is unfair, a test of reasonableness is applied to:-

A. The nature and extent of the inquiry carried out by the Respondent prior to the making of the decision to dismiss.

and

B. The conclusion arrived at by the Respondent on the basis of the information obtained in the inquiry.

With regard to the first part of this test, it is clear from the evidence given at the hearing in this case that the respondent carried out a comprehensive and full enquiry into the acts and conduct of the

claimant which caused them concern, and underpinned their eventual decision to terminate his contract. Representatives of the respondent held several meetings with the claimant and the minutes of these meetings were opened and read into evidence at the hearing. This enquiry was carried out over a four-month period, from the first board meeting on 9th April 2009 until suspension of the claimant on 7th August 2009. The Tribunal heard evidence of the claimant's use of the respondent's monies for his own purposes, and for purposes never sanctioned by the respondent. Evidence was also given in respect of his taking of unauthorized dividends and bonus'. Further evidence was given in respect of the claimant opening up a pharmacy, which competed for business with the respondent. This act was prohibited in his employment contract. There was also evidence of the claimant's purchase of drugs for this business with monies belonging to the respondent.

It was clear from the evidence given at the hearing that the claimant was given every opportunity to explain and justify his acts and conduct. Indeed the claimant, in his evidence, accepted that he had carried out the acts referred to but sought to explain them with reference to other projects that were in the process of evolving. The claimant also stated that some of these acts were carried out with the consent of the respondent but the respondent denied this and the claimant failed to produce any evidence in support of this. Where no explanation was forthcoming, the claimant stated that these acts were an oversight on his part. These meetings were in addition to e-mails and telephone calls from other representatives of the respondent's company. The evidence revealed that the manner and content of the replies given by the claimant to the respondent, either at these meetings or in e-mails, were given in such a manner as to cloud or hide the truth. Evidence was also given that the assurances, given by the claimant to the respondent at some of the meetings, not to engage in certain practices and to comply with the directives of the respondent in respect of banking procedures, were empty assurances as the claimant continued to engage in same.

With regard to the second part of this test, the conclusion arrived at by the respondent in deciding to dismiss the claimant was a decision with which they were left no option but to take, given the conduct of the respondent. The claimant was dishonest in his dealings with the respondent, with regard to his replies to queries raised and assurances given. Dishonesty goes to the root of a Contract of Employment. It serves to undermine the trust and confidence that is essential to the maintenance of the relationship between the employer and the employee. Where trust has disappeared, the breakdown of a relationship between the employee and employer inevitably follows.

The Tribunal accepts that the claimant was under severe financial pressure during this time. The recession had arrived and this exacerbated the claimant's already existing financial difficulties. The Tribunal also accepts that the claimant believed that he could overcome his difficulties and restore his position to what it had been theretofore. This belief came across in his evidence, and clearly formed the basis for his actions and conduct. The claimant, in relying on the materialization of future projects, was clearly of the opinion that he had done no wrong. However, an employee is not entitled to build such castles in the air, and especially if they are at the cost of one's employer.

The claimant placed much emphasis on his allegation that the respondent did not have the authority to terminate his contract of employment, given that not alone was he an employee of the respondent, but also a Shareholder. The Tribunal does not accept this. The reality is that the claimant's employment was terminated as an employee of the company, after full inquiry, and in accordance with procedure set out in the employment contract. The inquiry was confined to the claimant's position as employee of the respondent. His position as shareholder had no place in the inquiry. The claimant had a right of appeal the decision of the respondent to terminate his employment. The Tribunal notes that the claimant did not utilize this right of appeal.

In the circumstances, the Tribunal finds that the dismissal of the Claimant was not an unfair dismissal, and accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

No evidence was adduced in relation to a claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and therefore that claim is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

