

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

-claimant

CASE NO.
UD2538/2009
MN2373/2009

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. K. T. O'Mahony B.L.

Members: Mr. G. Andrews
Mr. F. Dorgan

heard this claim at Ennis on 16 June 2011

Representation:

Claimant: Mr. Derek Sheahan B.L. instructed by Fitzgibbon O'Riordan, Solicitors,
49 O'Connell Street, Limerick

Respondent: Ms. Siobhan McGowan, Purdy Fitzgerald, Solicitors, Kiltartan House,
Forster Street, Galway

No witnesses appeared to give evidence on behalf of the respondent

The Tribunal refused an application on behalf of the respondent to adjourn the hearing on the grounds that the respondent's witnesses (the respondent's HR Manager and the claimant's direct line manager) had sufficient notice of the hearing to allow them to make arrangements to enable them to attend the hearing and give evidence and on the grounds that the respondent failed to make a timely application for an adjournment.

Claimant's Case

The claimant worked for the respondent, a logistics company, from August 2006 and at the relevant time had been an account development manager since 1 October 2008. The claimant's key account was that of a large computer manufacturing company (Co. D). The respondent

decided to re-structure in order to cut cost and the claimant was involved throughout the process reporting to his new line manager (FVD). At a business review meeting in January 2009 a new member of staff (NE) was introduced; this surprised the claimant as the rationalisation had already begun.

In December 2008 FVD conducted the claimant's performance review and gave him a very poor performance rating, which was communicated to him by e-mail on 22 December 2008. Prior to this the claimant had done well in his performance reviews and FVD had never raised any performance issues with him. He had also received a low rating in the review on his goals. The claimant was dissatisfied with how FVD handled his appeals on the reviews. In an attempt to resolve the matter he travelled to Holland in late January 2009 but matters remained unresolved and as a result he suffered further stress and upset. On his return to Ireland he engaged with the HR director of the Irish company on the issue. On 6 March 2009 he was put on certified sick leave. In April 2009 the claimant travelled to Holland again to meet with FVD and the Dutch HR Manager to try and resolve the situation. At this meeting the Dutch HR Manager was anxious that the claimant would return to work as soon as possible. The claimant had tried to engage with both managers at the meeting but felt he got nowhere with them. On his return to Ireland he informed the HR Director in Ireland that he had felt 'intimidated and singled out' and requested a copy of the formal grievance procedures in May 2009.

On 26 May 2009 the claimant received an e-mail from the HR Manager in Holland asking him to attend a 'business update' meeting on 08 June in Shannon. As he was still on sick leave and not fit to attend this meeting he requested the updates be sent to him by e-mail. By letter and email both dated 04 June the HR Director urged the claimant to attend the June meeting. By email and letter both dated 08 June 2009 the claimant was informed that his position was being made redundant and in a further letter of same date he was informed that his redundancy would be effected on 6 July 2009. There was no prior consultation, or notice or alternatives discussed with the claimant and the selection criteria was not communicated to him at the time. The claimant was offered the right to appeal this decision and did so by letter of 07 July 2009. After numerous requests the selection criteria was sent to him by letter of 22 October 2009 but the appeal meeting did not take place.

The claimant gave evidence of loss and alternative employment secured. The claimant now works directly for the above-mentioned Co. D. The claimant is aware that NE is now the respondent's contact with that company, performing the role had he previously performed.

Determination

The Tribunal is satisfied that the respondent was properly on notice of the hearing.

Based on the uncontested evidence of the claimant the Tribunal finds that the claimant was dismissed by the respondent on 6 July 2009.

As the respondent failed to appear and discharge the onus of proof that rests on it under s.6 (6) of the Unfair Dismissal Acts to show that the dismissal was fair, the Tribunal in applying s.6 (1) of the Acts deems the dismissal to be unfair. Accordingly, the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds. Having considered the evidence on loss and having taken into account the redundancy lump sum payment already made to the claimant, the Tribunal awards him €65,000.00 as just and equitable compensation under the Acts.

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

withdrawn at the outset of the hearing.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)