

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *claimant*

UD2099/2010

against

EMPLOYER - *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan  
Members: Mr J. Hennessy  
Ms S. Kelly

heard this claim at Portlaoise on 19th January 2012

Representation:

Claimant(s) : Ms. Colette Egan BL instructed by Byrne Carolan Cunningham, Solicitors, Oak House, 39/41Mardyke Street, Athlone, Co Westmeath

Respondent(s) : No legal representation

### Respondent's Case

(DT) for the respondent company gave evidence that the company is a landowner and rents land to farming enterprises. The company employed the claimant as a gardener. On Easter Monday 2010 he met with the claimant and informed him that he was making him redundant as he could no longer afford to employ a gardener. He showed him evidence of the company's financial losses. He had no issues with the claimant's work performance but he could no longer afford to keep him in employment and an alternative such as reducing his hours of work was not a viable option. The claimant has not been replaced and his duties are now performed free of charge by the tenant of the respondent's adjoining land.

Under cross examination he denied that he told the claimant that he was unhappy with his work performance and that he wanted to get somebody new in and start afresh. He confirmed that he employed a part-time housekeeper at the time of the claimant's employment and he continues to employ this housekeeper on a part-time basis. He denied that he walked the garden in the company of a lady on Easter Monday 2010 showing her the gardens. He had nobody with him on that day apart from his family.

## **Claimant's Case**

The claimant gave evidence that he commenced employment as a gardener with the respondent company in March 2009. His duties were primarily maintenance of the gardens along with some development work. He was provided with accommodation by the respondent at his place of work. On Easter Monday 2010 a lady called to his accommodation and said she was a gardener and had an appointment with (DT). He showed her to (DT's) house and later saw them walking through the gardens. Later that day, after the lady had departed he asked (DT) what was happening. (DT) then told him that he was letting him go as he was getting somebody else to look after the gardens and wanted to start afresh. He did not say that he could no longer afford a gardener or that the company was losing money.

The witness was shocked and confused when he was told that he was being let go. He moved out of his accommodation and could not confirm to the Tribunal if his position was replaced. He has no knowledge of the respondent company's financial position. He was not shown any evidence that the company was losing money. He confirmed that he did not pay rent for the accommodation provided to him but he did pay utility bills. He gave further evidence that the main garden for which he had responsibility covered an area of approximately 2.5 acres. He operated a commercial ride on mower to cut the grass in this area. Since his dismissal he has sought alternative work in the Athlone area but has not secured any employment.

## **Determination**

There was a clear conflict of evidence in this case. The respondent gave evidence that he met the claimant on Easter Monday 2010 and told him that his position was being made redundant due to the financial circumstances in which the company found itself. The claimant gave evidence that during the course of a casual conversation on that Easter Monday the respondent told him that he was being let go and that he (the respondent) was getting somebody else to look after the gardens and wanted to start afresh. Even if the respondent's evidence is preferred (and the Tribunal is not adopting any position on this particular issue) there is a procedure which must be followed in such circumstances. It is the view of the Tribunal that there was a complete lack of fair procedures.

While acknowledging that the respondent only employed two people nevertheless he should have notified the claimant in writing that the claimant's position was being considered for redundancy and inviting him to a meeting to discuss this and afford the claimant the opportunity to make representations as to how his job might be saved. The respondent did not even make the case, at the hearing, that he gave any prior notification of any meeting to the claimant. Even by the respondent's own evidence he met the claimant and told him his job was gone even though the respondent and the claimant disagree on the subsequent conversation as to the reason for the dismissal.

The Tribunal does not accept that the respondent acted as a reasonable employer would have acted in the circumstances.

Indeed section 5 of the Unfair Dismissals (Amendment) Act 1993 provides that the reasonableness of the employer's conduct is now an essential factor to be considered in the context of all dismissals. Section 5, inter alia, stipulates that:

*"..... in determining if a dismissal is an unfair dismissal, regard may be had..... to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation*

*to the dismissal”*

Having considered the totality of the evidence the Tribunal determines that the claimant was unfairly dismissed. The Tribunal deems compensation the most appropriate remedy and awards the claimant the sum of €3,000.00 under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

