

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM OF:**

**CASE NO.**

EMPLOYEE

- appellant

RP2882/2010  
UD2127/2010  
MN2084/10  
WT947/10

**Against**

EMPLOYER

- respondent

**under**

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
ORGANISATION OF WORKING TIME ACT, 1997  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr C. Corcoran B.L.

Members: Mr J. Horan  
Mr. J. Dorney

heard this claim at Naas on 21st June 2012.

**Representation:**

Claimant: Mr. Paul Twomey BL, instructed by Mr Conall Bergin, Osbornes, Solicitors,  
Town Centre House, Naas, Co Kildare

Respondent: Ms Teresa King, KPMG, 1 Stokes Place, St Stephen's Green, Dublin 2

The determination of the Tribunal was as follows:-

At the outset of the hearing the claims under the Redundancy Payments Acts, 1967 to 2007 and the Organisation of Working Time Act, 1997 were withdrawn.

**Claimant's Case:**

The claimant commenced employment in 1999 and was employed as an assistant green keeper. He took care of the general maintenance of the golf course. He was not given a contract of employment.

In 2005 he was transferred to a new course (P) He received a contract of employment and was promoted. His new salary was €45,000.00 per annum with an additional bonus paid twice yearly totalling €7000.00. JM owned the course.

He enjoyed a good working relationship with personnel. When a new accountant SS was appointed some tension arose in the workplace.

The claimant was asked for his input into making the golf course profitable. He submitted a budget. The course catered for corporate play and there was no membership. The course was not overly busy. His direct line manager was MM.

He was served with an RP9 dated 11<sup>th</sup> May 2010 informing him that he was being temporarily laid off due to restructuring with effect from 16<sup>th</sup> May 2010. A second RP9 issued on 17<sup>th</sup> May 2010 with an amendment stating that he was being temporarily laid off “for financial reasons due to restructuring”.

This came as a bolt out of the blue. There was no prior indication that redundancies were imminent. Nor had he any prior indication that the company was having financial difficulties. He was aggrieved and felt there was a personal attack on him by SS and JM to get rid of him. He did not sign the RP9 and seek his statutory redundancy as he felt he deserved more than that. There was a strained relationship between himself and both SS and JM.

The claimant attended a meeting on 5<sup>th</sup> July 2010. He put forward proposals and suggestions and enquired why no alternatives had been looked at. He knew this was a waste of time. He believed that a genuine redundancy situation did not exist.

Two new employees were employed approximately two weeks after he was temporarily laid off.

The claimant wrote to the company secretary, PM on 8<sup>th</sup> September 2010. He had not been paid his gross weekly wage since 14<sup>th</sup> May 2010 and arrears of wages were owing to him together with a bonus payment. He stated in his letter that if these monies were not paid to him by close of business on Friday, 17<sup>th</sup> September 2010 that he had no option but to treat himself as dismissed by the company. The claimant never received a response to this letter. The claimant had been passionate about his work and enjoyed working for the respondent. He felt he had no option but to leave the company.

He believed he was unfairly dismissed. Since the termination of the claimant’s employment he applied for many positions. He secured alternative work abroad on a course which commenced on 1<sup>st</sup> July 2011 but was told the club could close by the end of July 2012. There was a reduction of €12,000 in his new position.

### **Respondent’s Case:**

The respondent is in receivership. The Receiver’s representative, TK did not contest the claimant’s evidence. No evidence was adduced by the Receiver’s representative.

**Determination:**

The Tribunal carefully considered the evidence adduced by the claimant. Based on the claimant's uncontested evidence the Tribunal is satisfied that because of the claimant's uncertainty of his future with the company he had no alternative but to terminate his employment.

The Tribunal is satisfied that the claimant was unfairly dismissed and awards him €67,500.00 under the Unfair Dismissals Acts, 1977 to 2007. The Tribunal also awards the claimant €7,500.00 being the equivalent of eight weeks pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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