

## EMPLOYMENT APPEALS TRIBUNAL

### CLAIM OF:

EMPLOYEE

- *Claimant*

### CASE NO.

UD1138/2009

Against

EMPLOYER

- *Respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J Flanagan BL

Members: Mr M Flood

Ms M Maher

heard this claim at Dublin on 19<sup>th</sup> November 2012

### Representation

Claimant:

Respondent: No appearance by or on behalf of the respondent

The determination of the Tribunal was as follows:-

### Determination

The representative for the claimant made an opening statement. The Tribunal was advised that the claimant was one of a large number of employees of the respondent who had brought certain claims before the Equality Tribunal. The claimant and the other employees had been represented by the same firm of solicitors as appears for the claimant in this case. It would be the claimant's case that the claimants' began to receive disciplinary warnings and was ultimately dismissed because he had brought a claim before the Equality Tribunal.

The claim was initially brought against a limited liability company by way of a Form T1A received on 4<sup>th</sup> June 2009. A Form T2 was received on 18<sup>th</sup> March 2010 stating that the respondent's correct legal name was that of an unlimited liability company (the only difference in the two names was the presence or absence of the word "limited"). A second Form T1A was

received on 5<sup>th</sup> June 2012 stating the respondent's name as before but without the use of the word "limited". The Tribunal notes that the Companies Registration Office printout states that there was a change in the status of this company from limited to unlimited on 24<sup>th</sup> February 2006. The Tribunal therefore finds that the correct legal name is that of the unlimited company and dismisses the claim against the other named respondent.

The Tribunal was furnished with a contract of employment and a payslip and is satisfied that the claimant was employed by the respondent.

The Tribunal noted the contents of the Form T2 filed by the solicitors for the respondent. It was stated that the respondent was disputing the claim and the reasons are quoted hereunder in full:

"The applicant was issued with several verbal and written warnings. He was ultimately dismissed for misconduct justifying dismissal. He was advised of the appeal procedure and failed to utilise it."

The Tribunal therefore finds that the claimant was dismissed.

The burden of proof lies upon the respondent to prove that the dismissal was not unfair. There was no appearance by or on behalf of the respondent and therefore the Tribunal finds that the dismissal was unfair due to the failure of the respondent to discharge that burden and not for any other or more specific reason. The Tribunal comes to no finding as to whether or not the dismissal was for the reasons asserted in the claimant's opening statement.

The Tribunal has had regard to correspondence from the solicitors initially acting for the respondent stating that a receiver had been appointed over assets of the respondent company and to the statement by the solicitor for the claimant that the respondent company had not been placed into liquidation.

The claimant's preferred remedy was compensation. The Tribunal stated that the burden of proof was on the claimant to prove loss. The Tribunal was advised by the solicitor for the claimant that some 58 out of approximately 66 employees had been let go either by way of dismissal or redundancy. The solicitor for the claimant stated that the claimant had not maintained contact with his former workmates and was not in a position to give evidence as to when the other employees had been let go but that some had been let go before him and some as much as a year afterwards.

The Tribunal explained that it would assess loss on the basis of its estimate as to how much longer the claimant would have had work before being made redundant and the amount of the redundancy which he would have then received if he had not been unfairly dismissed. The Tribunal finds that the claimant's gross weekly remuneration was €680 per week. The Tribunal estimates that the claimant would have been in work for about a further 8 weeks before receiving redundancy of about 9 weeks remuneration and approximates these figures for convenience and because the basis for this estimation is itself not a matter of precise science. The Tribunal notes that the claimant was first re-employed on 24<sup>th</sup> August

2010 and is satisfied that the claimant made adequate efforts to mitigate his loss.

The Tribunal determines that the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and awards to the claimant the sum of €11,560 (being 17 weeks remuneration at €680 per week).

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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