

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE (*claimant*)

CASE NO.  
UD1226/2011  
MN1321/2011

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 J. McGovern B.L.

Members: Mr W. Power  
Mr M. O'Reilly

heard this claim at Dublin on 14th November 2012

Representation:

\_\_\_\_\_  
Claimant(s) : Frank Ward & Co, Solicitors, Equity House, Upper Ormond  
Quay, Dublin 7

Respondent(s) : Christina Ryan, B.L. instructed by Ivor Fitzpatrick & Company,  
Solicitors, 44/45 St Stephens Green, Dublin 2

The determination of the Tribunal was as follows:

Dismissal as a fact was in dispute.

The claimant was employed as a sales executive from 1<sup>st</sup> November 2005. His job entailed the sale of watches to independent retailers working four and a half days on the road with weekly meetings every Friday.

Evidence was heard from the managing director (MD) of the respondent and from the claimant. It was the claimant's evidence that on 11<sup>th</sup> May 2011 he received a telephone call from the MD to ask him whether he was the JB working for company S, a separate company in competition with the respondent. The claimant told the MD that he was not working for company S at that juncture but that he had intended having a conversation with the MD about his resignation. The claimant intended working for company S as an independent contractor in the future and had negotiated a contract to start with company S on 1<sup>st</sup> June 2011.

As a result of the telephone conversation, the MD told the claimant to bring his belongings along with the car to the office the following day. The next day the claimant drove to the office and went to the MD with his phone and keys and placed them on the table. The claimant said "It did not have to be this way" and told the MD that he would be hearing from the claimant's solicitor. According to the claimant he was escorted off the premises, although the MD indicated that this was not the case and that he merely walked out with the claimant.

It was the claimant's evidence that although the MD did not say he was dismissed, it was clear to him that this was the case. The claimant was prepared to give the respondent two months' notice. The claimant subsequently started work as a self-employed independent contractor with company S in or about 1<sup>st</sup> June 2011. The claimant's accounts for the period 1<sup>st</sup> June 2011 to February 2012 were opened to the Tribunal and examined.

Under cross-examination the claimant stated it was his intention to leave the respondent company and he had his letter of resignation ready to hand in the following Friday (13<sup>th</sup> May 2011). He was not given the opportunity to explain the resignation in the MD's office and assumed he had been dismissed.

The MD gave evidence stating he telephoned the claimant on 11<sup>th</sup> May 2011 to ascertain the situation in relation to company S. He explained to the claimant that he was in receipt of a flier stating that JB was working for company S. The MD told the Tribunal that he telephoned company S wherein it was confirmed to him that the claimant would be working for them. On relaying this to the claimant on the telephone, he responded by saying "I'm resigning and you will have a letter". The MD told the claimant to bring his samples and property to the office the next day. When the claimant arrived the next day, the MD asked him what was the situation in relation to company S but the claimant would not give him any information. The MD said to the claimant "you resigned". The claimant told him he would be hearing from his solicitor.

### **Determination**

Having considered the verbal and written submissions, the Tribunal are unanimously of the view that the claimant was not unfairly dismissed and therefore the claim under the Unfair Dismissals Acts 1977-2007, fails.

Accordingly, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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