

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:  
EMPLOYEE

CASE NO.  
UD410/2011  
MN396/2011

Against

EMPLOYER

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr J. Hennessy  
Mr A. Butler

heard this claim at Thurles on 6th November 2012

Representation:  
\_\_\_\_\_

Claimant: JJ Fitzgerald & Co, Solicitors, Friar Street, Thurles, Co Tipperary

Respondent: Brian D Hughes & Co, Solicitors, "Longmall", Slievenamon Road,  
Thurles, Co Tipperary

The determination of the Tribunal was as follows:-

**The determination of the Tribunal was as follows:**

Dismissal as a fact was not in dispute between the parties. The claimant was employed as a general and racing manager of a greyhound track. The company wanted to amalgamate the commercial and general side of the business. A director of the company gave evidence that the claimant was employed initially on a 6month contract and was then given a further 2year specific contract dated 1<sup>st</sup> January 2009, to expire at the end of 2010. The contract stated that it was fixed term of 2 years but due to a typographical error stated an expiry date of 31<sup>st</sup> December 2011.

The reason it was a 2 year contract was because the business wanted to keep its options open and return to a two manager situation if things did not work out. A meeting took place in October 2010 between the claimant and the board of directors. Various issues were discussed including the claimants contract. He was advised that the position remained the same, he had a renewable

contract. The end date was not discussed by either party. The board wrote to the claimant on 22<sup>nd</sup> December 2010, giving him notice and advising him that his contract was not being renewed in 2011. It had been decided by the board to revert to a position where two managers would be used, one racing and one commercial because the commercial side of the business was suffering. The claimant did not apply for either position when advertised.

It was the claimant's evidence that he initially began on a six month contract and then received a further contract for the same role. He observed that it was for two years but also saw that its expiry was stated to be December 2011. This latter termination date was what stuck in his mind and what he abided by. He did not seek legal or other advice on the contract. He did not apply for the job as racing manager because he felt this job should have been offered to him and he had already initiated a claim for Unfair Dismissal under the Acts.

**Determination:**

The Tribunal carefully considered the evidence adduced by both parties. It is evident that there are patent ambiguities in contract of employment in relation to the date of termination and thus of the duration of the contract. The respondent failed to adduce evidence to clarify or explain the ambiguities. In these circumstances the Tribunal is of the view that the claimant had a legitimate expectation that he held a three year contract ending on 31st December 2011. The tribunal is bolstered in this view by the fact that the contract contained provisions more appropriate to a contract of indefinite duration.

The Tribunal finds in all the circumstances and in particular taking the provisions of Section 13 of the Act into account that the claimant was unfairly dismissed. However in arriving at this determination the Tribunal is influenced by the fact the claimant failed to forcefully raise his concerns with the respondent did not seek to alleviate his circumstances by applying for the racing manager position when it was advertised.

In these circumstances the tribunal finds the appropriate award to be compensation and awards the claimant the sum of €12,000.00 under the Unfair Dismissals Acts 1977 to 2007

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

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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