

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

UD1839/2011

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Flanagan BL

Members: Mr L Tobin
Mr J Dorney

heard this appeal at Dublin on 11th February 2013

Representation:

Appellant:

Colleen Cleary, Solicitors, 16 Ely Place, Dublin 2

Respondent:

Mr Donal O'Reilly, Liquidator, 24 Boroimhe Birches, Swords, County Dublin

This case came to the Tribunal by way of an appeal against a recommendation of the Rights Commissioner reference number r-097554-ud-10/RG.

Determination

The appellant claimed that he had been unfairly dismissed by way of an unfair selection for redundancy.

The employer company was in liquidation and represented by the liquidator who did not intend to call any witnesses. The burden of proof in an unfair dismissal claim lies upon the employer to show that the dismissal was not unfair.

The burden of proof lies upon the employee seeking compensation to prove the quantum of loss. The appellant had been employed as a sales representative by the respondent. Subsequently a second sales representative was taken on. The appellant was of the view that when a second sales representative was appointed that there was only enough work for one of them. Eventually the appellant was let go and the newer sales representative was also let go approximately seven months after the appellant. The Tribunal understands that the managing director absorbed the sales function into his role in the period after the dismissal of the second

sales representative and prior to the firm ceasing to trade.

The contract of employment provided that the appellant was to receive remuneration of €50,000.00 per annum. The appellant sought compensation to be calculated on the basis of the above remuneration plus the annual car allowance. Tribunal does not accept that the car allowance constitutes remuneration and disallowed that part of the claim. The Tribunal noted that the appellant had a contractual entitlement to commission of 5% of gross margin of sales. The appellant stated that the commission had not been paid.

Both parties were content to accept that the appellant's total gross annual remuneration was €55,000.00 (to include €5,000.00 per annum in commission earned) and the Tribunal so finds.

The appellant agreed to accept an award based on the period of loss arising from the unfair dismissal being seven months. The liquidator indicated no objection to this course.

As the burden of proof to show that the termination of employment was not unfair was not discharged by the respondent the Tribunal finds that the appellant was unfairly dismissed.

The Tribunal finds that the period of loss was seven months.

The Tribunal finds that the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and awards to the appellant compensation of seven months remuneration calculated on the basis of annual remuneration being €55,000.00 per annum being a total sum of €32,083.33.

The parties may wish to note that payments out of the Insolvency Fund are subject to a cap of €600.00 per week.

The recommendation of the Rights Commissioner r-097554-ud-10/RG is set aside.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)