

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE  
*-claimant*

CASE NO.  
UD1145/2011

Against

EMPLOYER *-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. J. Lucey  
Members: Mr. J. Hennessy  
Mr. A. Butler

heard this claim at Thurles on 7th November 2012  
and 7th February 2013  
and 8th February 2013

#### Representation:

Claimant: In person

Respondent:

#### **Background**

Dismissal is not in dispute in this case.

The claimant began in May of 2008 as an insurance and investment manager, providing financial advice on products and selling them. Financial probity is of the utmost importance for the job. Paragraph 19 of the claimants contact deals with disclosing any financial difficulties to the bank and the contact was signed by the claimant. In June 2009 the bank became aware of a listing against the claimant in Stubbs Gazette. This was not disputed by the claimant and the bank requested a financial investigation to clarify his situation. The claimant never actually provided a comprehensive statement of his financial situation to the bank. After months of requests and meetings, failure to disclose or provide full details led to the claimant's dismissal for gross misconduct. Both internal and external appeals were upheld.

#### **Respondents Case:**

JK (regional sales manager) gave evidence that he and along with the regional manager interviewed

the claimant for the position. At no time did the claimant mention any financial difficulties. In early July 2009 it was brought to JK's attention that a person of the same name as the claimant was listed in Stubbs Gazette. He asked the claimant if it was him and after checking with his solicitor the claimant confirmed that it was.

Under cross examination JK denied that he had ever been told by the claimant that a business he owned was in receivership. The claimant was offered the position very shortly after his interview but felt it was normal as they required someone urgently. He denied that the financial side of the claimants background was overlooked because the need to employ someone as soon as possible or that the claimant was investigated because he had raised questions about a Fund.

JG gave evidence that he was sales operations manager during the period of the investigation. He was the investigation manager. He described the claimants role as providing advice, life policies, unit linked investment products and pension solutions. Financial probity/ fitness of probity was crucial in the claimants position, he had to be a fit person to advise customers. JG wrote to the claimant on 13<sup>th</sup> July requesting full disclosure of his finances. A meeting was called for 23<sup>rd</sup> July and at that time the claimant was put on special paid leave. The claimant replied to the letter advising them that he was not in a position to give full disclosure as his solicitor was in dispute with the receiver who had been appointed. The claimant went under the care of his doctor around this time. Various correspondences requesting the financial affairs of the claimant continued and the investigation report (given to Tribunal) was prepared by JG.

Mr G area sales manager gave evidence to the Tribunal.

#### **Claimant's case:**

The Tribunal heard evidence from the claimant. He explained how he became employed by the respondent company. He had been in contact with PoR who recommended him for a position. He was then approached by JK who worked in the bank Insurance and Investments. JK phoned him about a position and he met JK in a hotel in Kilkenny. He did not mention about his public house.

He then got a phone call from JK who told him that he was to meet PE who was the bank area manager. He met with PE and he told PE about his bar.

The claimant explained to the Tribunal that the bar was in receivership and it is still in receivership. However at the time he thought that the receivership was coming to a close and that all documents would be signed and that all his debts would be cleared and he would have considerable funds. He thought that the matter was coming to an end. He mentioned the matter to JK and to PE. He himself paid creditors with his salary. He did not hide anything. He stated that he "would not waste the banks time or my own time by not making them aware of my history". It was his "full honest belief that the bank had all the information and fully declared".

JK phoned him and they agreed on remuneration. He signed the employment contract with the bank. He then went on a training course in Dublin.

Regarding probity he asked every person if he had advised them wrongly and they all answered "no".

The claimant then mentioned that the way he was relieved of his duties left a lot to be desired. He would find it difficult to return should it be possible for him to be allowed. His removal could

have been discrete and that the staff did not need to see him being removed. So even though there was an appeal he felt that “the door was closed”.

The claimant explained that the bank “knew what they were getting”, (they knew of his situation) and “It did not impinge” on his job.

The claimant gave evidence as to his loss.

**Determination:**

The Tribunal having heard the evidence in this case are unanimous in that the dismissal was fair. The respondent has shown that in law the dismissal was fair. The claimant signed a document that stated in section 19:

“As an employee of a financial institution you have particular responsibility to keep your own financial affairs in good order. It is a condition of your employment that you disclose without delay to your manager any serious financial difficulties you experience and any bankruptcy or other debt proceedings threatened or brought against you.”

The claim under the Unfair Dismissals Acts, 1977 To 2007, fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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



