

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO.  
UD48/2007

Against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Mr. M. Forde  
Ms. P. Doyle

heard this claim at Cork on 7th November 2007

### Representation:

Claimant : In person

Respondent : Mr. John Boylan, McNulty Boylan & Partners, Solicitors,  
26-28 South Terrace, Cork

The determination of the Tribunal was as follows:

### Respondent's Case

The company's sole human resource employee outlined the nature and background to this case. This software business was established in 1997 and expanded from its original base in Cork to overseas operations. It supplied and offered software applications to the pharmaceutical and financial services sectors. Prior to its adverse commercial difficulties from 2006 the respondent's workforce totalled approximately one hundred and fifty. From that year the company's costs seriously exceeded its revenue. According to the witness that scenario forced the company to cut back on its overheads. Since then the respondent has halved its staff numbers, mostly by redundancy and the claimant's position and employment within the company formed part of that process.

The witness gave what she described as a heads-up to the claimant in the latter half of 2006. She indicated that this was a term used to strongly indicate to him that his job was now vulnerable. At that time he held the position of Director of Life Sciences for Europe. Both he and his team were not reaching financial targets. The witness viewed her role in the claimant's departure as "easing

himself out” and in that respect offered him an “amicable separation” package. She added that the respondent did not “do enhanced redundancy” for its employees at that time due to its financial position. The claimant declined the company’s offer.

In early November 2006 the claimant and the then Chief Executive Officer of the respondent met to discuss the claimant’s situation. By that time it was the witness’s impression that the claimant was aware of the respondent’s financial position and how it could affect him. On 16 November 2006 the witness acting in the name of the company wrote to the claimant giving him one month’s notice of his termination of employment. That letter also stated that the claimant’s position had been made redundant due to re-organisation and business performance. Apart from his statutory entitlements the respondent also furnished the claimant with an extra payment and benefit.

### **Claimant’s Case**

The claimant labelled himself as a professional computer manager with many years of experience in that business. Following contact with the Chief Executive Officer the claimant commenced employment with the respondent in the spring of 2005 as Director of European Alliances. In January 2006 he accepted the position of Director of Life Sciences for Europe. The respondent was growing rapidly at that time and the claimant’s team increased from three to eight. Even though he expressed concerns about this growth and the direction of the company the claimant proceeded to operate his new role. A “significant re-organisation” in the summer of that year resulted in the claimant now reporting to a person in the United States. He described communications with that person as weak and told the human resource witness of that situation. The claimant generally worked from home and called into the Cork office around every fortnight.

In accepting that his team’s financial performance was not as he had hoped the witness added that his team achieved seventy percent of their targets. That figure was high relative to other sectors of the business. Based on his experience and knowledge the claimant added that the fortunes of software companies can fluctuate over time. The company had high expenses in 2005 due to their expansion and growth and he did not accept that it had no money so that it was forced to terminate his employment with them. The claimant acknowledged his position was not replaced following his departure but said the team he was responsible for was consolidated as distinct from disbanded. He was aware of the nature of the meeting prior to his discussions with the Chief Executive Officer on 6 November 2006. The witness stated that subsequent to that meeting the human resource person gave him the choice either to accept what’s on offer or leave. The claimant felt his termination and selection for redundancy was unfair and biased and that no clear process was used in reaching that decision.

### **Determination**

Having carefully considered the evidence adduced and the relevant submissions the Tribunal finds that the claimant was unfairly dismissed. The issue of a statutory redundancy does not arise in this case as the claimant’s employment with the company was less than two continuous years. The respondent did not show in a clear and concise way how their selection process resulted in the loss of employment for the claimant. Natural justice was denied to the claimant in that respect. In addition the respondent did not deny or justify the contention that it presented the claimant with a choice of either leaving on its terms or having his employment otherwise terminated.

The claim under the Unfair Dismissals Acts, 1977 to 2001 succeeds and the Tribunal awards the

claimant €18,000.00 as compensation under those Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

