

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.
MN1184/2009

UD1177/2009

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 D. Hayes BL

Members: Mr G. Mc Auliffe
Mr J. Flannery

heard this claim at Dublin on 25th May 2010

Representation:

Claimant(s) : Ms. Mairead McKenna BL instructed by Barry J Rafferty, Solicitors, 77 Sir John Rogerson's Quay, Dublin 2

Respondent(s) : No appearance by or on behalf of the respondent

The decision of the Tribunal was as follows:-

Determination

The claimant was employed by the respondent in February 2005. He had recently been made redundant by his previous employer and was head hunted by PR, the former principal of the respondent. He was the operations manager and was effectively left to run the company given that PR and his wife spent a lot of the year in Italy.

He had no difficulties in his employment until 19 March 2009 when he was unexpectedly dismissed for gross misconduct. By this time UR was the principal. He was called to her office and told that a complaint had been received that he had advised a customer not to settle his account as the respondent would shortly enter liquidation. This was strenuously denied by the claimant. He was asked to resign, which he refused to do given that he had done nothing wrong. UR told him that in

the alternative he was to be made redundant. That afternoon UR telephoned him to say that she had changed her mind and that he was to be dismissed for gross misconduct.

There was no appearance by or on behalf of the respondent notwithstanding that the liquidator had been properly notified of the hearing. The claimant's solicitor had also made several attempts to contact the liquidator, all to no avail.

There is a presumption of unfairness and no evidence was adduced to rebut that presumption. The Tribunal is therefore satisfied that the claimant's dismissal was unfair. Notwithstanding the failure to adduce evidence, the Tribunal is substantively satisfied that the dismissal was unfair. If an employee has been guilty of gross misconduct it is not appropriate to dismiss him by reason of redundancy. The only avenue open to an employer is, having adopted fair procedures, to dismiss the employee on grounds of gross misconduct.

The claimant, fortunately, was soon re-employed by one of the respondent's customers. However he is not paid as much as he was with the respondent. That loss is ongoing and he is employed only on a month-to-month contract. However the Tribunal must take account of the fact that the respondent went into liquidation a short number of weeks after his dismissal. Therefore, even if he had not been unfairly dismissed, his employment would have come to an end.

The Tribunal is satisfied that the appropriate remedy is compensation and in respect of the claim under the Unfair Dismissals Acts 1977 to 2007 awards the sum of €10,000.00 as being just and equitable in all the circumstances.

In respect of his claim under Minimum Notice and Terms of Employment Acts 1973 to 2005 the Tribunal accepts that the claimant's gross weekly pay was €1091.34 as indicated on his T1A form. The Tribunal is satisfied that he was not given notice of his dismissal. He was entitled under the Acts to two weeks notice. Accordingly, the Tribunal awards compensation in the amount of €2182.68.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)