

## EMPLOYMENT APPEALS TRIBUNAL

### CLAIM OF:

### CASE NO.

EMPLOYEE

- claimant

MN1005/09

UD987/09

### Against

EMPLOYER

- respondent

### 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. M. O'Connell B.L.

Members: Mr G. McAuliffe  
Mr. T. Brady

heard this claim at Dublin on 1<sup>st</sup> April 2010.

### Representation:

Claimant: Mr. Niall Buckley BL instructed by Declan J. O'Connell & Co., Solicitors,  
St. Mary's House, Old Lucan Road, Lucan, Co. Dublin

Respondent: Mr. Karl Dowling BL, instructed by Mr. Finbar O'Leary, Michael  
Powell. Solicitors, 5 Lapps Quay, Cork

The determination of the Tribunal was as follows:-

### Respondent's Case:

No evidence adduced.

### Claimant's Case:

The claimant gave evidence. He commenced employment on 16<sup>th</sup> January 2003 as a Quantity Surveyor. After four months he was promoted to Contracts Manager. In May 2006 he was promoted to General Manager for the Dublin office.

On 5<sup>th</sup> December 2008 the claimant was requested to attend a meeting with the company's director (COK) on Monday, 8<sup>th</sup> December 2008 in the head office in Cork. He understood the purpose of the meeting was to discuss up-coming contracts.

After two hours the General Manager sat in on the meeting and COK left the meeting for about ten minutes. Upon COK's return, COK indicated that he was unhappy with the claimant's performance and was going to terminate his contract of employment. The claimant had a good relationship with COK and had no warnings that his contract was going to be terminated.

Since the claimant's dismissal he applied for numerous positions and attended many courses. He was unemployed for approximately twelve months. In January 2010 he set up as a sole trader

The claimant told the Tribunal that the company's policy was to sub contract work. He was encouraged to utilise sub-contractors over direct labour as direct labour had become expensive. Figures were negotiated for every sub-contractor. Some work was sub-contracted to a company of which he held a directorship. No favouritism had been shown. The respondent had never taken issue with this work being sub-contracted to his company.

After the claimant's dismissal he wrote to the company. He asked for written confirmation for the reasons for his dismissal. This was never communicated to him.

**Determination:**

The Tribunal having carefully considered evidence believes that the claimant was dismissed without any reasons being given and without any proper procedures being used. Accordingly, the Tribunal finds that the claimant was unfairly dismissed. In relation to loss the Tribunal believes that the claimant sought to mitigate his loss as best he could but unsuccessfully. The Tribunal notes that the claimant has recently taken up employment as a sole trader with an income of €500 per week. The Tribunal awards the claimant €65,000.00 under the Unfair Dismissals Acts, 1977 to 2007 and also awards the claimant €4364.00 being the equivalent of four weeks notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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