

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE
MN789/2009

- *claimant*

CASE NO.

UD770/2009

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. T. Ryan

Members: Mr. N. Ormond
Ms M. Mulcahy

heard this claim at Dublin on 5th February 2010

Representation:

Claimant: Mr. Andrew Turner, Hamilton Turner, Solicitors, 66 Dame Street, Dublin 2

Respondent: No appearance by or on behalf of the respondent

The determination of the Tribunal was as follows:

Claimant's Case

The claimant gave uncontested sworn evidence. He commenced employment with the respondent in July 2007. At the start of December 2008 a director informed him and two other employees that their employment was finished. He received his P45 in January 2009.

Previously, on 12th November 2008 he had been issued with a letter which amounted to a written warning in respect of his sales targets, he felt this was their way of getting rid of people. This letter issued after he had met with the director both on an individual basis and with his other colleagues where they had discussed the company's performance. He was not forewarned that he would be receiving this letter. Their wages were paid late in September and October.

In December 2008 there were four working in the company including the claimant. Two of his colleagues were dismissed at the same time as the claimant. Both of these received redundancy.

The other employee who continued to work for the respondent had longer service than the claimant.
The company ceased trading in April 2009.

He had received payslips regularly up to August 2008 and after this he had to request them. He had not received a contract of employment. In reply to questions from the Tribunal, he explained that he felt his dismissal had been unfairly handled; they had not been receiving their salary on time. The commission fees in the company were not as high as they had been but he still was earning commission. While he agreed that the director had conveyed to him the financial difficulties of the company, she had told them the reason they were being dismissed was in respect of the letters of the 12th November 2008. He had presumed when they were late getting paid that there was a problem with their credit with the bank.

Determination

The Tribunal carefully considered the evidence adduced. While it would appear that the dismissal was not handled correctly, the respondent had informed the claimant and his colleagues both individually and collectively that the company was in financial difficulties.

However the Tribunal finds that a genuine redundancy situation existed accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

During the course of the hearing it was established that the claimant had received his minimum notice, therefore the claim under the Minimum Notice and Terms of Employment Acts 1973 – 2005 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

