

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD1322/2005

against

2 Employers

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Mr G. Phelan
Ms H. Kelleher

heard this claim at Cork on 9th February 2007

Representation:

Claimant :

In Person

Respondent :

In Person

The determination of the Tribunal was as follows:-

Respondent's case:

The claimant commenced his employment with the respondent on 13th September 2004. He had worked with a sister company prior to joining the respondent and had left on a voluntary basis three to four week before starting with the respondent. Having left the sister company he rang the respondent and was offered a position as general operative. In mid 2005 there was a significant drop in business activity with turnover down by 30% from 2003 to 2004. By September the turnover was down by 40%. With regard to 2004-v-2005 the business was down by €208K. During the Summer the respondent would normally take on temporary staff and in 2005 they took on only one as opposed to four the previous year. During the Summer period the holidays werere-scheduled however by September action had to be taken. The claimant was let go on 15th September 2005 and another employee who worked on a temporary basis as general

operative during the summer months was let go on the same day. The respondent's employees consisted of electricians, apprentices, sales/administration and general operatives. Some staff with different qualifications to that of the claimant and some with shorter service were kept on beyond September 2005 while others left of their own accord. When the claimant left in September 2005 there were two or three general operatives still remaining but they had longer service than he. A staff chart showing the periods of service was presented to the Tribunal during the course of the hearing.

The proprietor went to the claimant in September 2005 and told him that cut-backs had to be made. By letter dated 12th September 2005 he was given notice and his employment was terminated on 14th September. He was given verbal notice on the same day. He was paid his holiday entitlements together with a generous payment for service and notice. Through the respondents involvement in the electrical contracting trade they made representation on behalf of the claimant and he got alternative employment a few days later. While the claimant was with the respondent's sister company in 2003 they funded a course in UCC in the amount of €2.5K and when he had finished the course the claimant gave notice and left but later returned to his employment. They also paid the claimant a bonus at Christmas.

Claimant's case:

The claimant said this case was not about money but he wanted to vindicate himself for the way he was treated. He worked five years in total for the proprietor who could be very abusive. The claimant worked long hours and there was no choice. There were other employees who refused to work these hours and they were let go. Three weeks before his dismissal he was told he was costing too much. On the day of his dismissal the claimant was told he had no choice and that the proprietor would make him go one way or the other. He was called to the canteen to meet the proprietor and there was a shouting match when the claimant tried to point out that others with shorter service were kept on after him. The respondent said that those referred to were sub-contractors.

While the respondent did pay for a health and safety course he felt he and his colleagues were asked to do dangerous jobs and were not given the safety gear they needed. He did not receive his letter of dismissal until it was sent to him by the Tribunal in the exchange of correspondence between the parties. He felt he was unfairly treated in the way he was given his notice and was dismissed unfairly.

In cross-examination the claimant stated that he secured alternative employment on 19th September 2005 at a higher wage.

Determination:

The Tribunal is unanimous that based on the evidence of the parties the claimant was not unfairly

dismissed. His claim under the Unfair Dismissals Act 1977 to 2001 is therefore dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

