

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

CASE NO.

UD168/2007,RP61/2007

MN111/2007

Against

Employer

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal

(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr J. Walsh
Mr. S. O'Donnell

heard this claim at Dublin on 15th June 2007

Representation:

Claimant : Mr Seán Ó'hUallacháin instructed by
Doyle Hanlon, Solicitors, 6 Richmond Road, Drumcondra, Dublin 3

Respondent : No representation listed

The determination of the Tribunal was as follows:

The Tribunal is satisfied that the respondent was properly notified of this hearing. Neither the respondent nor a representative on its behalf appeared for this hearing.

During the course of the proceedings the appeal under the Redundancy Payments Acts, 1967 to 2003 was withdrawn.

Claimant's Case

The claimant commenced employment with the respondent as an apprentice mechanic in December 1977. Following his qualification as a diesel mechanical the witness specialised in truck engines. The claimant sustained a shoulder injury as a result of an accident at work in August 2005. When he returned from sick leave the following month the respondent's service manager asked him to now attend to lighter duties. The claimant submitted initial medical reports on his condition but was not required to furnish the respondent with similar ongoing certificates. He felt that he had no choice but to accept those lighter duties. The claimant's salary was not affect by that change. The claimant's work colleagues began to query and question his new situation. They indicated to

him that they were not convinced that he was incapable of reverting back to his former tasks. The witness brought that issue both to the management and a trade union official. Such approaches proved fruitless. That situation deteriorated further when the owner of the respondent started to verbally abuse the claimant due to his ongoing work duties. In January 2007 the witness received a “roasting” from the owner for no apparent reason.

Shortly after that encounter the claimant was approached by his service manager who offered him a redundancy package. That approach “came out of the blue” as that was the first time the respondent had raised that issue with him. That manager indicated to the claimant that his instructions were to dismiss him if he did not accept that package. The witness was “dumbfounded” at that ultimatum and felt he had to accept it. He subsequently accepted a cheque related to his departure from the company, lodged it into his account but has not cashed it. The witness maintained that his position with the respondent was not gone. He added that a process of redundancy was not applied to his situation.

Determination

Having considered the uncontradicted evidence of the claimant the Tribunal finds that his dismissal was unfair. The respondent seems not to have adopted a selection process in regard to the claimant’s redundancy application. Their dismissal of the claimant appeared arbitrary and without justification. Accordingly the Tribunal awards the claimant €7617.06 under the Unfair Dismissals Acts, 1977 to 2001.

The appeal under the Minimum notice and Terms of Employment Acts, 1973 to 2001 is allowed and the Claimant is awarded €5539.68 under those Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

