

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
Employee

CASE NO.  
UD361/2007  
RP157/2007

against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001 REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mrs. M. Quinlan  
Members: Mr E. Handley  
Ms M. Maher

heard this claim at Dublin on 3rd August 2007

#### Representation:

Claimant: In person

Respondents: XXXX

The determination of the Tribunal was as follows:

#### **Claimant's case:**

The Claimant told the Tribunal that he was withdrawing his claim under the Unfair Dismissals Acts, 1977 to 2001 and proceeding with his claim under the Redundancy Payments Acts, 1967 to 2003.

The Claimant worked in the company since 1988. The company was sold to the first named Respondent (hereafter known as R1) in 1991. He continued working in the company and over the years became a supervisor. In or around 01<sup>st</sup> July 2006 the company amalgamated with the second named Respondent (hereafter known as R2). He was told of this some six weeks prior to the amalgamation. The owner of the R1 told the Claimant that he did not know if R2 had work for him but that he would be entitled to redundancy.

A week before the changeover R1 told the Claimant that he was not entitled to redundancy because

there was work for him. The Claimant explained that he felt pressurised to take the job as he had a wife and family. He signed a contract for the job with R2. He was told that if he didn't sign the contract then there would be no job for him.

He worked for R2 for two and a half months and he decided to leave "because of the whole set-up and the way things were going". He had a supervisory role in R1 but not in R2. He had attained perks in R1 but had not got the perks in R2, "It was a big step down". His wages remained the same.

After two months working for R2 he was offered a job in another company and he accepted the offer and left R2.

The Tribunal asked the Claimant if he had read the contract and he replied that he did. He was asked if he understood the contract stated he was a manufacturing operative and he agreed he did.

The Tribunal heard evidence from a former colleague of the Claimant. He told the Tribunal that he was working for R1 and was told three weeks before the event that there would be no work for him in R2 and he got his redundancy payment. He was subsequently offered work in R2 and he refused. Some time later when the Claimant left R2 he was asked to work for R2 to give them a "dig out" and he worked for R2 for a period of time. He was doing the same work in R2 as he had done in R1. He never applied for redundancy from R1 he was offered redundancy. He took redundancy instead of going to R2.

**Respondent's case:**

The Tribunal heard evidence from a director of R2. He and the co-owner/director were approached by R1 in 2006 and they later purchased R1.

They interviewed the Claimant and offered him work with the same terms and conditions "but with the job description we had offered". The Claimant signed a contract and commenced working for them in July 2006. The Claimant left them in September 2006 for another employer. The Claimant left them on good terms.

In reply to questions from the Tribunal the witness explained that they were told the Claimant was a "blender". They were not employing a manager or a supervisor. He agreed when it was put to him that their case was that the Claimant resigned from his employment.

The Tribunal heard from the former director/owner of R1. He told the Tribunal that there was a transfer of business and that R2 were happy to employ the Claimant and they did. The Claimant when employed by R1 had not a job title and was not a supervisor.

**Determination:**

Having heard the evidence the Tribunal is of the unanimous view that the Claimant voluntarily left his employment. No redundancy situation existed in his new employment. The Tribunal is satisfied that after circa two and a half months in his new employment, towards the end of September 2006, the Claimant obtained alternative employment and he resigned his position. His claim under the Redundancy Payments Acts, 1967 to 2003, fails.

The claim under the Unfair Dismissals Acts, 1977 to 2001, was withdrawn.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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