

EMPLOYMENT APPEALS TRIBUNAL

Claims Of:

Case No.

Employee

UD741/2006

MN493/2006

WT243/2006

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. R. O' Flynn B.L.

Members: Mr. M. Forde
Mr J. McDonnell

heard this claim at Cork on 13th September 2007

Representation:

Claimant: Mr. Eoin Clifford B.L. instructed by Ms. Mary Scriven,
Ernest J. Cantillon & Company, Solicitors, 39 South Mall, Cork

Respondent: Mr. David O'Dwyer B.L. instructed by Mr. Bob Costigan,
Denise Kelleher & Associates, Solicitors, Unit 4, Gleann Alainn,
Ballygarvan, Co. Cork

The determination of the Tribunal was as follows:

Respondent's Case:

A director of the company gave evidence to the Tribunal. The respondent manufactures stairs and windows. The company commenced trading in June 2000. The claimant commenced employment in June 2004 through a Fás registered scheme. The claimant was completing a four-year apprenticeship. The company had two apprentices employed before the claimant. The respondent employed another apprentice in or around the same time as the claimant. The company employed a number of fully qualified people after the claimant.

The respondent's business was good at the time the claimant was employed but it later suffered a downturn. The director was aware that the quantity of work had decreased as he has responsibility for pricing jobs. Also, the number of telephone queries had decreased and the cost of materials increased. The accounts for the company showed there was a decrease in profits after tax for the company as at 31 August 2005 compared to the profits after tax as at 31 August 2004.

On the 26 January 2006 the claimant and the apprentice who started the same time as the claimant were given notice of their redundancy. Before the claimant was given notice the company contacted the Fás officer and obtained the names of three employers who had vacancies for apprentices. The directors and the secretary held a meeting with the claimant and his colleague. The claimant and his colleague were told that the company's work had decreased and that they were to be made redundant. The claimant and his colleague were provided with the names of the three employers who had vacancies at that time.

During his last week of employment the claimant sustained an injury. He subsequently brought a personal injury claim and was awarded compensation. The claimant's employment ended on the 3 February 2006.

It was the first time there had been a redundancy situation in the company. The claimant and his colleague were selected as they were apprentices and the company could not keep them employed while making fully qualified staff redundant. Also, the claimant and his colleague were selected on the basis that they were the last apprentices to be employed by the company. The director accepted the claimant was owed holiday pay to the amount of €371.08.

After the claimant's employment ended his work was covered by other employees. Eight months after the claimant's redundancy, an apprentice (who started employment with the respondent in 2002) finished his apprenticeship. The respondent then employed him as a fully qualified employee. An apprentice was then employed to fill his vacancy.

During cross-examination the director confirmed the claimant and his colleague were the last of the apprentices to be employed by the company but not the last to be employed overall.

The director first noticed the company's workload had decreased during December 2005. The company was usually busy in this month but had not been that year. It was put to the director that the claimant had not seen any evidence of a downturn in business. The director stated that he and the other director had discussions with their accountant about the downturn in business.

The director accepted that the wages bill increased when the other fully qualified employees started work after the claimant. It was put to the director that the company could have saved money by keeping the apprentices instead of fully qualified employees. The director replied that the respondent could not do this. The company needed to streamline and retaining the fully qualified employees did this.

Answering questions from the Tribunal, the director stated that one apprentice remained after the redundancies in 2006. One of the two apprentices employed before the claimant had left the company during 2005.

The claimant worked eight hours a day including breaks but anything worked over eight hours he was paid overtime for.

Giving evidence an accountant stated that he compiles the respondent's accounts. The company's profits peaked in 2003 but there was a fall in profitability in 2004. While the company's profitability had decreased, its costs rose substantially, resulting in a reduction in net profit. Costs such as wages, insurance and depreciation increased. The profitability on work decreased as a result.

During cross-examination the accountant confirmed that the turnover of the company had increased in 2005 compared to the turnover in 2004.

Answering questions from the Tribunal the accountant confirmed that the company had suffered a reduction in its profit margin from 47% in 2003, to 39.9% in 2004, to 34% in 2005.

Claimant's Case:

The claimant commenced employment with the respondent in June 2004. The claimant did not observe a downturn in work towards the end of his employment. The claimant was first told about the downturn in business at the meeting on the 26 January 2006.

The claimant started new employment eight weeks after his employment ended with the respondent. Of the three employers that had vacancies for apprentices at that time, two of the three jobs were different from what the claimant had been doing.

The claimant has to travel a distance everyday to his new employment and he also had to buy his own tools, as his present employer does not provide them. The claimant believes the respondent should pay mileage costs to and from his new employment until October 2008, at which time he will have completed his apprenticeship. The claimant believes the respondent should reimburse him some part of the cost of the tools. The claimant accepted he would have future use of these tools.

During cross-examination the claimant accepted that the qualified employees had more experience than him but he had no difficulty doing the work. The claimant was shocked that he was selected for redundancy as he believed that if a redundancy situation arose it would operate on the basis of last in, first out.

It was put to the claimant that he was unable to work after his redundancy due to the injury he sustained in his last week of employment. The claimant confirmed this.

Determination:

Having heard the evidence the Tribunal is satisfied that a genuine redundancy situation existed and that a fair method of selection was utilised by the respondent. The claim pursuant under the Unfair Dismissal Acts, 1977 to 2001, fails.

The Tribunal having heard the submissions of counsel for the respondent and the claimant, award the claimant €371.08 being the equivalent of 5.5 days holidays relating to his claim under the Organisation of Working Time Act, 1997.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 was withdrawn during the course of the hearing.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)