

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD240/2008

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Ms J. Winters
Ms M. Mulcahy

heard this claim at Dublin on 12th June 2008

Representation:

Claimant : Mr William F. O'Brien B L instructed by
H Ward And Co, Solicitors, 5 Greenmount House, Harold's Cross, Dublin 6W

Respondent : No representation listed

The determination of the Tribunal was as follows:

Respondent's Case

The respondent is a family owned enterprise with a number of branches around the country and engaged in the distribution of electrical products and services to its clients. It is heavily involved in and linked to the construction industry. Its operations' director and a manager from its human resources gave evidence in this case. Both witnesses maintained that the respondent was justified in dismissing the claimant by way of redundancy. This was the first occasion in which the company carried out a redundancy and the only criterion used was the first in last out policy.

The claimant was recruited as a van driver in October 2005 and due to a reorganisation of the respondent he was moved to a distribution and warehouse depot in Ballycoolin, Blanchardstown in west Dublin in February 2007. In the autumn of 2007 the board of the respondent decided to adapt a redundancy strategy as a reaction to declining business. A decision was made to "do away" with the three delivery vans at the Ballycoolin depot. Of the three vans drivers there, the claimant was the most recently recruited. One of the van drivers left of his own violation and the other is due to retire later this year and neither will be replaced. The respondent intends to use couriers instead of their own vans in that depot. There was no plan to extend that scenario to their Naas branch. Staff numbers there were compatible with business requirements. Delivery vans continue to be used at

the respondent's other branches.

The respondent did not inform their staff including the claimant of the board's decision on redundancy. In early November 2007 the claimant suffered a loss of consciousness while driving one of the respondent's vans. As a result of that incident and for some time afterwards the claimant was declared medically unfit to return to work. When he did return later that month the claimant was assigned duties in the warehouse as he requested. By 4 December 2007 the claimant was fit to resume duties as a van driver. By that stage the respondent had no job there for him and continued to employ him in the warehouse but still regarded him as a van driver. The company indicated that the reason for this was to later implement their redundancy decision as regards van drivers.

References were made to an incident in the warehouse when the claimant found himself unable to unload a container. The respondent was told that he had refused to unload a particular container. On 30 January 2008 the operations' director wrote to the claimant giving him two weeks' notice of his dismissal by way of redundancy. He was the only employee in Ballycoolin and from the respondent's entire workforce to face redundancy at that time. The respondent did not apply the first in, last out policy to the claimant as part of the warehouse staff as some employees there had started subsequent to the claimant's date of commencement.

Claimant's Case

Up to the time of his mishap in the van in November 2007 and his transfer of duties to the warehouse the claimant and respondent enjoyed a good working relationship. From February 2007 the witness reported to the operations' director and had a separate supervisor in the warehouse. That supervisor in turn was annoyed at him when he expressed misgivings about the unloading of a container. Following his unloading of a first container the claimant developed some pain and had difficulty unloading a second container. He felt he was being picked on, as there was other staff available also for this job. He relayed his feelings to the operations' director. The witness maintained that his "ex-gratia" payment consisted in the main as two weeks notice and a back week.

Determination

The claimant was employed as part of the warehouse staff prior to and at the time of his redundancy. He was the only employee made redundant by the respondent and that was justified on his status of a van driver. The company's policy of first-in, last-out did not apparently apply to the workforce in general. The respondent seemed intent on parting with the services of the claimant. It did not inform him of their redundancy decision until the last possible moment and failed either to consult with him or offer him alternative employment. The Tribunal finds that the claimant was unfairly selected for redundancy and this renders his dismissal unfair under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal initially awards the claimant €8000.00 under those Acts, but reduces that amount by €2950.82 as this was the amount he received in a statutory redundancy payment. Accordingly his net award amounts to €5049.18.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

