

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

RP189/2007

UD455/2007

MN320/2007

WT134/2007

against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Ms M. Sweeney
Mr K. O'Connor

heard this claim at Tralee on 11th June 2008

Representation:

Claimant(s) : Mr. Dan O'Connor, Terence F. Casey & Co., Solicitors, 99 College Street,
Killarney, Co. Kerry

Respondent(s) : In person

The determination of the Tribunal was as follows:-

The Evidence:

The Managing Director (MD) of the respondent company is based in the head office in Cork. Initially the Sales Manager in the Kerry region looked after sales and servicing there on his own. Business in the Kerry region increased and the Sales Manager and the overall Service Manager, with MD's consent, interviewed the claimant and hired him in March 2004 as a service engineer for the Kerry region. Originally his duties were to service and install photocopiers and deliver office stationery and furniture. The claimant had worked in a similar type company prior to joining the respondent. The Sales Manager soon discovered that he had no electronic or electrical training whatever and as time went on he was mainly doing deliveries for the respondent. The Sales

Manager did sales and servicing.

Due to competition in the region sales decreased, profits fell and the business could no longer sustain a second employee. After Christmas 2006 sales did not improve and on MD's instructions the Sales Manager gave the claimant one month's notice. While business was normally quiet in January it had been "frighteningly" quiet in 2007.

The claimant contacted MD. He was upset and felt it would take him a year to get a job and enquired about redundancy. In March 2007 sales figures improved. MD contacted the claimant and informed him that if figures improved his position would be okay but otherwise she could not guarantee his job. He asked again about redundancy and MD assured him it was still available. The claimant sent her a text that evening to tell her that he was leaving the car with the Sales Manager, was accepting the redundancy and requested a reference. She made a redundancy payment to the claimant and the cheque was cashed. The Sales Manager confirmed that the business was still slow one year on. No one was taken on in Kerry after the claimant's dismissal. The respondent no longer covers the Tipperary region and the Service Manager there had been made redundant in November 2007. The number of service engineers employed in the business had reduced from five to three. While MD was not happy with the claimant's work and the Sales Manager sometimes had to service machines after the claimant had done a service. The main reason for his dismissal was the decrease in the respondent's business in the Kerry region; two men were no longer required there.

The claimant had been hired as a service engineer. However, it came to light soon into his employment that he had no electronic or electrical training. Some of the respondent's customers did not want the claimant to service their machines. When a customer complained about the claimant's work the Sales Manager discussed training with him. He was sent to the Cork on a one-day course to learn how to install a part into a specific section of one machine; the respondent services 40 different models.

The claimant did not accept that there was a redundancy situation in the respondent's business in Kerry and he was surprised when he was told he was to be let go. He had always been kept quite busy while working for the respondent. Shortly before his dismissal he had been sent on a course to Cork and while there he met MD who advised him that a new van was to be bought for him. It was MD's evidence that she considered buying a new van for the claimant but her accountant advised her that the business could not afford it. The claimant agreed that he had the option to stay on in the respondent company until he found another job but it was unfair to offer him a position on a monthly basis, depending on the level of business. He aware that one customer had complained after he had serviced their machine. He said that if he had been offered a position in the Cork office he would have taken it. He contacted the owner and was told that he could work for a month but that if business was quiet he would be let go. He said that he did not accept that he was made redundant but had accepted the redundancy payment. The Sales Manager told him the only time he did not get commission was in June or July when he was on holidays. It was the Sales Manager's evidence that he had never discussed his commission with the claimant.

Subsequent to the claimant's dismissal a person had been hired in the stores in Cork and a service engineer, who was fully qualified in colour and black and white engineering, was recruited in Cork one month after the claimant's dismissal.

It was the respondent's case that the claimant was recruited to work in the Kerry region. The Service Manager instructed the claimant where to work and he never sent him to Tipperary other than on one occasion he was asked to deliver and install a machine for a Kerry company there. The Cork and Kerry businesses were run separately. The Sales Manager had never instructed the

claimant to do calls in Cork or Tipperary. While the claimant accepted that he was based in Kerry it was his case that he also did work in Cork and Tipperary. He had gone to Cork to pick up a photocopier and delivered it to a customer in Tipperary and went back later to install it for the customer and while in both places he had done a call; to justify his day he had asked a senior person in Cork to give him some calls. He had gone to Cork on a fairly regular basis to pick up photocopiers.

Determination:

The Tribunal is satisfied that the claimant was employed to work in the Kerry region. Picking up photocopiers in Cork and delivering and installing a photocopier in Tipperary on one occasion over a three-year period does not constitute working in either area.

The Tribunal is satisfied that there was a downturn in the respondent's business and that the respondent had to re-evaluate its financial position and a restructure of the company had to be made. There was a redundancy situation in the Kerry region. The claimant was not unfairly selected for redundancy. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

While there was a redundancy situation in the respondent company the respondent offered the claimant the option of remaining on for a few weeks. However, the claimant decided to leave on 30 March 2007. Accordingly, the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 fails. The claimant received his redundancy lump sum payment and his appeal under the Redundancy Payments Acts, 1967 to 2003 fails. No evidence was adduced in relation to the claim under the Organisation of Working Time Act, 1997 and therefore the claim fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)