

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

against

Employer

under

CASE NO.

UD321/2008

RP257/2008

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mahon B.L.

Members: Mr. N. Ormond
Ms. M. Maher

heard this claim at Dublin on 11th July 2008

Representation:

Claimant(s): Mr. Maurice Hearne, S I P T U, Liberty Hall, Dublin 1

Respondent(s): In person

The determination of the Tribunal was as follows:-

Respondent's case:

In his sworn evidence, PD (*the owner of the respondent company*) said that the claimant worked with him for five years. He explained that the company is essentially a haulage business, which supplies trucks and drivers to different companies for the delivery of their freight, and that "they go where the work is".

For the first three years of his employment, the claimant delivered freight for company A, from company A's base in Blanchardstown. All of the respondent's trucks were based in Blanchardstown, which meant that they were parked and loaded in Blanchardstown. For the remaining two years of his employment, the claimant delivered freight for company B. The base for the second company was in Ballyboughal where the trucks were loaded. However, PD said that the company continued to use Blanchardstown as the base for parking the trucks. The respondent supplied company A and company B with three trucks, three drivers and a route planner.

In January 2008, company C took over the contract from company B. In his evidence, PD said that, at that time, he feared that there was going to be no more work for the company. However, company C gave the transport contract to the respondent but the requirements changed in that company C were only willing to pay for three trucks and three drivers. The respondent decided therefore to amalgamate the job of route planner with the job of driver for one of his drivers, so as to satisfy the requirements of the contract of company C. As the claimant did not have the required experience to do the job of route planner, the job was given to a colleague/driver.

Due to the reduced number of drivers required by company C, PD said that he feared he would have to let the claimant go but secured work for one lorry and one driver with company B. The job was offered to the claimant but he refused to take it, which surprised PD. PD said that there would have been no changes in the conditions of employment of the claimant in doing the job offered by company B. PD also said that this job is still available to the claimant, that no other driver has been taken on as a replacement and that he – PD – is now doing the driving that had been offered to the claimant.

In cross examination, PD conceded that for six weeks during March and April 2006, during the change of contract from company A to company B, the trucks had been based, parked and loaded from Ballyboughal and not based and parked in Blanchardstown as he had said in his direct evidence. He agreed that the drivers had not been happy with driving their own cars to Ballyboughal to collect and load their trucks but that this situation had only lasted for six weeks in 2006. After that, they had reverted back to the old situation of driving to and collecting their trucks at Blanchardstown.

PD also said that the claimant had not been offered the amalgamated job of driver/route planner because he did not have the required experience to do the job of route planner and that the routes of the other drivers had not been offered to him because these routes would not have suited him. He said that all of this had been explained to the claimant at the time. PD also rejected the idea that the claimant would not have known about the downturn in business.

When asked if the claimant was specifically told that his base for parking the truck would not change with the offer of the new job with company B, PD replied that the claimant knew that all trucks were based and parked at Blanchardstown as twenty-four hour security existed there. He suggested that the claimant had refused the offer of the new job with company B because he did not like change.

PD agreed that the alternative Lusk/route had been mentioned to the claimant but that he had not really been offered this route because he felt that it would not have suited the claimant and would have been an unfair route to offer.

PD rejected the argument that because the job of route planner had not been offered to the claimant, he had been made redundant. Because company C was only willing to pay for three trucks and three drivers, the job of route planner had been amalgamated with the job of driver. The amalgamated job had been given to the most experienced person for the job of route planner. This person had also been put driving on the most suitable route so as to be also available to do the job of route planner, in that it was the shortest route which therefore allowed this driver be back to base first and to have time to be able to organise the routes and loads for all drivers for the next day. Though accepting that the claimant had previously done the job of route planner, PD said that he had not considered him for the amalgamated job as he did not have the required level of experience and he could not have easily learnt the job.

Replying to cross examination, PD agreed that if a suitable alternative job had not been found for the claimant, redundancy would have been offered to him. PD also agreed that on initial receipt of the letter from the Tribunal in relation to this case, he had “panicked”, contacted the claimant and offered him €5500.00. He rejected the suggestion that he had actually offered the claimant redundancy. He said that redundancy would have been offered if the claimant had qualified for it. However, the claimant had not been made redundant, as alternative work had been offered.

Replying to Tribunal questions, PD confirmed that changes had also been necessary for the other drivers in that while the base for parking their trucks had remained at Blanchardstown, they now loaded from a base in Santry. He also agreed that the claimant was the longest in his employment.

PD confirmed that a contract of employment had not been offered to the claimant but that a system of work had developed over time.

PD said that he had made the decision to offer the claimants original route to the new amalgamated driver/route planner as this route most suited a more experienced route planner. This was a Dublin route, the shortest route and the driver on this route was first back to the yard and so best able to do the job of route planner for all drivers for their next days work. Driving a route of one of the other drivers had been discussed with the claimant but it had been decided that such a change would not have suited the claimant.

PD also told the Tribunal that the claimant had not been picked for dismissal as an alternative job had been found and offered to him. This job was still open and available to the claimant if he wanted to come back to work. He conceded that if the alternative job had not been found, he would have had to let the claimant go.

Claimant’s case:

In his sworn evidence, the claimant explained that his truck had been based and loaded at the base in Ballyboughal during 2006. He said that during that time, he had spoken to the respondent and told him that as he did not like working from the Ballyboughal base, he was giving up the job and he had secured an alternative job. However, the respondent had prevailed on him to remain, as the company was going back to its parking base in Blanchardstown, that they had a good relationship and that the company did not want to lose him.

On 11 February 2008, the respondent had informed him that the route that he was then driving was being given to another driver as this route was most suitable for the new amalgamated job of driver/route planner, the amalgamated job being created due to a downturn in business. He was told that his route was being changed to Lusk but that he had refused this new route as it would have added an extra hour and a half to his working day. He enquired from the respondent if he could drive the routes of one of the other drivers but this had been refused to him. He said that he was offered the choice of the Lusk route or redundancy. A figure of €5500.00 was mentioned as the redundancy offer. He said that he decided to accept redundancy but on taking advice, he told the respondent that his redundancy should come to a larger amount. Subsequently, the offer of redundancy was withdrawn.

The claimant said that on the last week of his notice period, the respondent had offered him a job at Ballyboughal but that he had refused it because it was too far to travel.

During cross-examination, the claimant said that he had rejected the offer of the Lusk route and had opted instead to accept redundancy. He also claimed that he had never been told and it had not been made clear to him that with the job offer at Ballyboughal, his truck would continue to be based and parked at Blanchardstown. He said that he understood that his truck would be parked and loaded at the base in Ballyboughal and that he would have to drive there from his home to collect his truck.

Replying to Tribunal questions, the claimant confirmed that he was not currently working. In relation to the offer of this job back with the respondent, the claimant said that he could not work for the respondent again as the bond that had existed was gone and trust no longer existed between them.

He also confirmed that as far as he was concerned, he understood that the offer of the job in Ballyboughal in March 2008 meant that his base would be Ballyboughal and that his truck would be parked and loaded there. The respondent disputed this and said that he had told the claimant that Blanchardstown would be the base.

Determination:

The members of the Tribunal very carefully considered all of the evidence adduced, both oral and written, at the hearing. The Tribunal finds that offers of employment, as discussed with the claimant and as notified to him by letter dated 10 March 2008, did represent a genuine offer of suitable alternative employment. Accordingly, having regard to all of the circumstances, it is the unanimous determination of the Tribunal that a redundancy situation did not exist in relation the claimants employment and that an unfair dismissal did not occur. Therefore the claims under the Redundancy Payments Acts, 1967 to 2003 and the Unfair Dismissals Acts, 1977 to 2001, fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)