

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

against

Employer

under

CASE NO.

UD959/2007

RP521/2007

MN747/2007

WT319/2007

**UNFAIR DISMISSALS ACTS, 1977 TO 2001
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
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: Mr. J. Sheedy

Members: Mr. J. Redmond
Dr. A. Clune

heard this claim at Limerick on 31st July 2008

Representation:

Claimant(s): Mr. James Dennison, Dennison, Solicitors, Dennison House,
Main Street, Abbeyfeale, Co. Limerick

Respondent(s): Mr. John Lynch, John Lynch & Company, Solicitors, Bridge
House, South Quay, Newcastle West, Co. Limerick

The determination of the Tribunal was as follows:-

At the commencement of the hearing, an application was made by the respondent's representative to amend the name of the company and same was granted. Also at this time, the claims under the Redundancy Payments Acts, 1967 to 2003 and the Organisation of Working Time Act, 1997 were withdrawn. Further, it was accepted by the parties that the claimant had only received two weeks notice of the termination of his employment when he had been entitled to four weeks notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Claimant's case:

In his sworn evidence, the claimant said that he had been employed as a driver for the respondent company for eight years, delivering windows and doors.

On 30 July 2007, he received a telephone call from a girl in the office saying that the owner of the company (*hereinafter referred to as JC*) wanted to meet him. He met with JC that afternoon. The claimant told the Tribunal that at that meeting, which only lasted for a few minutes, JC told him that his redundancy had been made up at €10,000.00 and that the other driver could not be let go as he had no farm. Personal remarks were made by JC about the claimant's farm. During the meeting, JC's telephone rang and the meeting ended while JC was still speaking on his telephone. The claimant said that the whole point of the meeting was to let him go.

Up to that point, the respondent company had employed him for eight years and no complaints had ever been made about his work. The other driver employed by the respondent had not been employed for as long as the claimant. Described as the "junior driver" by the claimant's representative, the claimant confirmed that this person had not been made redundant. This therefore was the reason he had brought his claim to the Tribunal, that the policy of "last in, first out" had not been applied when choosing him for redundancy. He confirmed that he had not been aware of the policy at the time of his redundancy.

The claimant explained that he was the sole breadwinner for his family and he said that he did not get a good income from farming. He had registered with FÁS and had applied to a number of places for work. He had not been successful in his endeavour to secure alternative employment. The claimant said that he loved driving and would take back his job with the respondent if it were offered to him.

Replying to cross-examination, the claimant denied that the meeting with JC was frank and down-to-earth or that he had commended JC on his decision. He said the thing he had understood from the meeting was that he was being dismissed on the spot, and that he could take the redundancy and walk away. The whole attitude of JC was that he had to give the job to the other driver. While agreeing that the other driver had worked for the respondent company for six years, the claimant maintained that this six years constituted a period of two years, then a break of service and then a return to work for the last four years. The claimant also said that though he had a dairy farm and was in receipt of decoupling grants, his farm income had decreased.

Answering a question from the Tribunal, the claimant confirmed that JC had said that the redundancy package would be ready for him by the weekend and also he confirmed that JC was still talking on his telephone when the meeting ended.

Respondent's case:

In his sworn evidence, JC said that he was the managing director and owner of the respondent company. He described himself to the Tribunal as a humanitarian. JC explained that two drivers had been employed by the respondent company, one of whom was the claimant who had been employed for eight years.

When asked to explain his meeting with the claimant, JC said that he had to let someone go and he had therefore met the claimant to discuss a "difficult situation". The meeting lasted 30 minutes during which JC explained to the claimant that his redundancy decision had been a humanitarian

decision, that one driver had four children and had no other income while he had a farm. JC said that he never had a bad word with the claimant and would not have treated him in such a way as to dismiss him summarily. In relation to the telephone call, JC said that he had telephoned his wages clerk to establish the amount of the redundancy package that the claimant would be entitled to.

JC explained that due to the current downturn in the construction industry, re-instatement of the claimant was not possible. He said that he had let 50 people go since last November and that six or seven people had been let go at around the same time as the claimant. They had seen this as fair because they had accepted that the respondent company did not have work for them. JC also said that all he sees for the company now is more redundancies.

During cross-examination, JC confirmed that the claimant had been a good employee. The respondent company had employed two drivers. Though not wishing to use the phrase that the claimant had been the “senior driver” when put to him by the claimant’s representative, JC admitted that the claimant had the longer service with the respondent. The other lorry driver is still in the employment of the company.

JC confirmed that he had let the claimant go and that he was aware of the policy of “last in, first out”. He said that he had made the decision to make the claimant redundant on purely humanitarian grounds. The claimant’s job had become redundant and it has nothing to do with the claimant having 50 cows.

Replying to Tribunal questions, JC said that at the time that the claimant was made redundant, there were approximately 170 employees but now this number had reduced by about 50 people. He said that no criteria had been applied in deciding as to who was made redundant among these other people but the decision had been made “on humanitarian grounds more or less”. He said that he would find it extremely difficult to let someone go if their personal circumstances were hard.

JC admitted that he had no documentation to show the downturn in business or to justify the selection for redundancy of any of the employees chosen for redundancy. He said that one driver is now making all deliveries, which was the proof that the claimant’s job had become redundant.

JC confirmed to the Tribunal that possible criteria he would have considered when selecting people for redundancy would have been length of service, personal circumstances, the availability of an alternative income and if an alternative job could be found within the company. He admitted however that when applying these criteria, no one had been excluded from being made redundant. He also admitted that no one chosen for redundancy had been excluded from being made redundant on humanitarian grounds.

JC said that voluntary redundancy had not been offered. He said that he applied simple criteria, meet with the person and explain the situation; if redundancy is accepted, fine but if not, don’t push it. He said that the claimant had accepted redundancy. However, JC admitted that he could not remember if an alternative job had been offered to the claimant prior to making him redundant.

Determination:

At the commencement of the hearing, the claims under the Redundancy Payments Acts, 1967 to 2003 and the Organisation of Working Time Act, 1997 were withdrawn.

Having heard and carefully considered the evidence adduced, the Tribunal unanimously determines

that the dismissal of the claimant was unfair by virtue of the inconsistent criteria applied by the respondent when considering redundancy. Accordingly, the Tribunal finds that the claim under the Unfair Dismissals Acts, 1977 to 2001, succeeds. The Tribunal award the claimant the sum of €20,000.00 having regard to all the circumstances.

The Tribunal accepts that the claimant was entitled to an additional two weeks notice on the termination of his employment and same was conceded at the commencement of the hearing. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 therefore succeeds and the Tribunal awards the claimant €1440.00 being the equivalent of two weeks pay.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)