

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
Employee

CASE NO.  
UD675/2008  
MN613/2008  
RP1161/2008

against  
Employer

under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 UNFAIR DISMISSALS ACTS, 1977 TO 2001 REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S C

Members: Mr M. Murphy  
Mr O. Nulty

heard this claim at Navan on 7th November 2008

Representation:  
\_\_\_\_\_

Appellant :

John P Prior & Co, Solicitors, Cogan Street, Oldcastle, Co  
Meath

Respondent(s) :

Mr. Vincent Turley, Human Resource Services, 1 Black Lane, Latlurcan, Monaghan, Co.  
Monaghan.

### **Preliminary Issue**

The appellant's representative made an application to have a redundancy claim added to the hearing. The Respondent had no objection and this application was granted by the Tribunal.

### **Appellants Case**

The appellant gave direct evidence that he started working for the respondent company in January 2004. He was employed as a helper on a delivery truck but also drove the truck on a regular basis accompanied by a truck driver. They made deliveries of furniture to various locations throughout Ireland. It was necessary to have two people working together on the long journeys as they

alternated the driving and unloaded heavy furniture at their destination.

In April 2008 the witness was informed by the transport manager that he was being made redundant. The witness stated that he was unfairly selected for redundancy as another employee who had commenced employment after him was not made redundant. The witness never received a written contract of employment and was not a member of a trade union.

Under cross examination the witness confirmed that he had acquired a full licence to drive a heavy goods vehicle in November 2007 and started to share the driving duties on an articulated truck when he acquired this licence. He agreed that he never made a delivery to a customer while driving an articulated truck unaccompanied by a driver.

### **Respondents Case**

The first witness gave evidence that he is a director of the respondent company and oversees the day to day manufacturing and delivery procedures within the company. The company experienced a decline in sales from the year 2007 and early in 2008 they decided to close down the manufacturing plant and reduce staff numbers in the transport division. Four employees were made redundant from the transport division including the appellant who was employed as a helper on a truck and they were given notice of their impending redundancies. The witness confirmed that one employee who had started working for the company after the appellant, was not made redundant. This employee was employed as a driver not as a helper and made deliveries unaccompanied on a heavy goods vehicle.

Under cross examination the witness confirmed that truck drivers work unaccompanied on short routes but are accompanied by a helper on long routes. On occasions these helpers are employed as factory workers. The witness agreed that there was no consultation carried out with employees in relation to the redundancy procedure and there is no grievance procedure in place within the company.

The second witness gave evidence that he is employed as the transport manager for the respondent company. He was involved in the selection procedure for redundancies and there was no discrimination involved in this procedure. One employee who had joined the company after the appellant, was not made redundant as he was employed as a driver and held a full licence to drive a heavy goods vehicle.

### **Determination**

The Tribunal having carefully considered the evidence adduced by both parties is satisfied that a redundancy situation existed in this case and the appellant was not unfairly selected for redundancy. The Tribunal is satisfied that the selection for redundancy was fair and therefore the appellant was not unfairly dismissed. The claim under the Unfair Dismissals Acts 1977 to 2001 fails.

The Tribunal is satisfied that the appellant received his notice and accordingly the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 fails.

The Tribunal allows the claim under the Redundancy Payments Acts, 1967 to 2003 and finds that the appellant is entitled to a redundancy lump sum payment based on the following criteria:

Date of Birth: 20 April 1970

Date of commencement of employment: 19 January 2004  
Date of termination of employment: 1 May 2008  
Gross Weekly Pay: €606.00

(It must be noted that a statutory gross weekly ceiling of €600.00 applies to payments from the Social Insurance Fund.)

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

