

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

Employee

MN1009/2008  
UD1096/2008

against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001  
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr M. Kennedy  
Ms. N. Greene

heard this claim at Dublin on 6th January 2009

Representation:

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Claimant :

Mr David Whelan B.L., instructed by Peter Nugent & Co., Solicitors,  
16 Herbert Street, Dublin 2

Respondent :

Mr. Joseph Bolger, ESA Consultants, The Novum Building,  
Clonshaugh Industrial Estate, Dublin 17

The determination of the Tribunal was as follows:-

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 was  
withdrawn by counsel for the claimant.

**Respondent's case:**

The Tribunal heard evidence from the managing director and owner of the company. They are a  
sign and print company and they supply and fit shop fronts and AA signs on backs of buses. The  
claimant reported to the production manager. They are constantly down-sizing as they are loosing

work and in the last week of November 2008 they let go another five employees and witness is out selling trying to find a level of survival. He set up the business in 1992 and until 2007 they were dependent on the building sector. Their level of business started to drop and they were running out of cash therefore they had to trim down. Witness borrowed from the sales director at the time to keep afloat.

Three employees including the claimant were let go at first and having explained the situation to the claimant he thanked witness. He was paid redundancy and was also paid in lieu of notice. Amongst those made redundant were the sales director and they had to look at the skills amongst the staff to try and keep the business. The claimant did the Londis supermarket work and they have now lost that contract. On a skills level the claimant was the one employee they could lose the easiest and this was explained to him.

In cross-examination witness stated that in the Summer of 2008 the person they took on was a vinyl applicator who replaced a specialist vinyl applicator. The claimant was not a vinyl applicator. They cross-trained on machines to try and keep going. They had in or around thirty employees and they now have twenty. The first day the redundancy was discussed was on 25<sup>th</sup> July 2008. They had a cash-flow problem so witness had to start somewhere. When selecting for redundancy he looked at the skills and length of service. He mentioned an employee with three/ four years service who was replaced as he was not able to wrap a vehicle and this is a skill that is not easily picked up. Witness is out selling and all the employees are multi-tasking.

#### **Claimant's case:**

The claimant worked as a sign fitter both interior and exterior in the retail sector. On 21<sup>st</sup> May 2008 he was working in Cavan and had finished in or around 6pm and he was subsequently asked by another employee as to what time he finished on the day in question. The claimant stated the time and he was told that was not the case as he had been seen driving through Navan at a particular time. When the claimant checked his diary he had not taken a break that day and he added on half an hour to his finishing time. At a meeting on 26<sup>th</sup> May 2008 he was questioned about his time-keeping and the production manager made reference to his sitting around and doing nothing. In relation to a particular job he was also told that two sales representatives were unhappy with his work and this was the first the claimant heard of this. On 27<sup>th</sup> / 28<sup>th</sup> May he told the respondent he was unhappy with the way he was being treated. In July 2008 he was again questioned by the production manager and asked why he was not taking certain routes for particular jobs. There was also a comment regarding a ripple in a mesh banner that he had hung at a cinema.

Regarding the redundancy conversation the economic climate was mentioned. When he asked why he was picked out he was told about skills and length of service of other employees. One employee was able to operate machines and he could not do so. Others could multi-task and he did not have those skills. A couple of Polish employees were hired and sub-contractors were also used for particular jobs. One employee who was taken on about eight to ten weeks prior to his redundancy was a vinyl applicator and the claimant had been asked to show him around as he did not know the city.

In cross-examination witness stated he was not happy with the manner in which the redundancy happened. When the new production manager came on board it seemed like it was a form of bullying in the way he was treated by him. He agreed that he cashed the redundancy cheque and was paid his notice. While all the staff knew things were tight he was brought in at lunchtime and told he was being made redundant. He felt he should have received notice in advance of the

redundancy and he also felt that the decision to make him redundant was influenced by the production manager.

In answer to questions from Tribunal members two others were made redundant the same day as the claimant and five others at a later stage however he was not familiar with all of these employees or the circumstances of their being made redundant. While he had heard people talking of the downturn in the industry it was only a week before his redundancy that staff were formally told. The employee who was taken on as vinyl applicator wraps cars and when witness was asked if he could have done that job his response was if trained he suppose he could have. He stated this was a skilled job and he did not know how to do it.

**Determination:**

In this case the Tribunal is satisfied that the respondent was objectively fair in selecting the claimant for redundancy. The Tribunal is further satisfied that a genuine redundancy situation existed in the company at the time and that no alternative position was available for the claimant within the company therefore the claim under the Unfair Dismissals Acts, 1977 to 2001 must fail. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 was withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

