

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

MN16/2009

CASE NO.

UD13/2009

claimant

RP10/2009

against

Employer -
respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr J. Goulding
Mr O. Nulty

heard this claim at Monaghan on 10th March 2009

Representation:

Claimant(s) :

Mr Barry Healy, Barry Healy & Company, Solicitors, "Laurel Lodge", Hillside, Co. Monaghan

Respondent(s) :

Brendan Breathnach & Co, Solicitors, 16 Earl Street, Dundalk, Co Louth

The determination of the Tribunal was as follows:-

Determination

The claimant was dismissed for alleged redundancy. While his case in the Tribunal was in part that he was not genuinely redundant, we find that, as the respondent reduced his workforce by one third and had reduced needs for the JCB that he drove, the claimant was in fact redundant.

The claimant also argued that he was unfairly selected for redundancy. The relevant section of the Act is section 6 (3) as amended.

“(3) Without prejudice to the generality of subsection (1) of this section, if an employee was dismissed due to redundancy but the circumstances constituting the redundancy applied equally to one or more other employees in similar employment with the same employer who have not been dismissed, and either—

(a) the selection of that employee for dismissal resulted wholly or mainly from one or more of the matters specified in subsection (2) of this section or another matter that would not be a ground justifying dismissal, or

(b) he was selected for dismissal in contravention of a procedure (being a procedure that has been agreed upon by or on behalf of the employer and by the employee or a trade union, or an excepted body under the Trade Union Acts, 1941 and 1971, representing him or has been established by the custom and practice of the employment concerned) relating to redundancy and there were no special reasons justifying a departure from that procedure, then the dismissal shall be deemed, for the purposes of this Act, to be an unfair dismissal.”

Paragraph b above does not arise as there was no evidence of Trade Union custom or practice. The claimant’s main argument that he was chosen because of his age. The claimant was 62 at the time of his dismissal but he undermined his case when he admitted that another employee made redundant the same day was a “young lad”. We find that the claimant was not unfairly selected for redundancy within the subsection.

Section 5(b) of the amending Act 1993 provides:

"(7) Without prejudice to the generality of subsection (1) of this section, in determining if a dismissal is an unfair dismissal, regard may be had, if the rights commissioner, the Tribunal or the Circuit Court, as the case may be, considers it appropriate to do so—

(a) to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal,”

There was some conflict of evidence between the claimant and the person who dismissed him as to how it actually happened. The claimant said that he made a complaint that he had been “docked” two hours pay for the first time in his 23 years of service, that the foreman rejected his complaint and added “I have worst news for you, you are being paid off”. The foreman said he went to see the claimant for the purpose of telling him that he would be made redundant but he agreed the claimant had raised the issue of the two hours pay first.

It seems to us that the claimant regarded the “docking” of two hours pay as an insult after his twenty three years service and he commented in evidence “If I was treated with a bit of decency I would not be here today”.

The Tribunal is of the view that the dismissal in that context and having regard to his 23 years service would be perceived by him as adding injury to insult. It is our view that the manner in which the dismissal was handled was unreasonable within the meaning of section 5(b) quoted above.

The Tribunal therefore finds the dismissal unfair.

Compensation

The employer has shown a substantial ground, namely redundancy, to justify the dismissal and the claimant had failed to satisfy us he was unfairly selected. Because, we find the dismissal unfair only by reason of the manner in which it was handled, we would assess compensation at a modest level. Such an approach in our view is “just and equitable having regard to all the circumstances” under section 7 (1) c of the Unfair Dismissal Act 1977 to 2001.

We award the claimant compensation in the sum of €5000.00 under the Unfair Dismissal Acts.

The respondent conceded that the claimant was not given the full notice and we award the claimant €3,858.12 being six weeks pay under the Minimum Notice and Terms of Employment Acts 1973 to 2001.

The claim made under the Redundancy Acts is dismissed as the claimant was paid his statutory redundancy.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

