

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO

Employee
- *claimant*

UD696/2008, MN633/2008
WT285/2008

Against

Employer
- *respondent*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. R. Prole
Mr. P. Woods

heard this claim at Dublin on 5th December 2008 and 10th March 2009

Representation:

Claimant : Ms Cathy Maguire BL instructed by
Ms. Aileen Fleming, Daniel Spring & Co., Solicitors, 50 Fitzwilliam Square, Dublin 2.

Respondent : Mr Ken Stafford, 7 Castletown Court, Celbridge, Co. Kildare

The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2001 and the appeal under the Organisation of Working Time Act 1997 were withdrawn at the outset of the hearing.

Claimant's Case

The claimant gave direct evidence that he worked as a printer for the respondent company and had twenty-one years service in the printing industry. He qualified as a printer from Bolton Street College. Prior to working for the respondent he worked on top of the range technology in the printing industry. He was approached by the respondent company and started working for them in November 1997. When he started working for the respondent he earned £550 per week and had a great relationship with this employer. He worked from 8am until 4pm daily and shift work was not part of his working week. He worked a total of 39 hours per week. He received two pay increases, one of which was approx €5,000.00 per year.

Approximately one year later he approached the Managing Director seeking an increase in

his wages. The Managing Director again asked him to stick with the company and paid him €2,100.00 over a four-week period. The witness accepted this payment and, as the company had purchased a new digital technology printer he wanted to be included in the new digital operation. He attended training courses as part of this new digital process but ultimately never operated the new machine. A different employee was the operator of the new machine.

In or about April 2007 he approached the Managing Director seeking agreement on a shift rate premium. He was told by the Managing Director "I would rather close this place down than pay you a shift rate". Around Christmas 2007 he had a meeting with the Managing Director and was told that his work performance had decreased and he did not smile anymore. He was told that the directors had lost faith in him and asked why he does not get a new job. It was a very negative meeting and it was the last occasion that the Managing Director spoke to him even though he continued working for the respondent for another six months. His working relationship with his employer deteriorated after this meeting.

He went on to give evidence that the respondent company had lost a contract with Diageo in the Summer of 2005 but had secured new contracts with Mercedes, Fiat and Coors Light while he was still in employment. He was on annual leave from 1 May 2008 until 19 May 2008 and on his return his employer informed him that due to a downturn in business he was being made redundant. His employer told him that he had the least service in the company. He was not offered alternative work and he suggested to the company a possible alternative such as job sharing. This suggestion was not accepted by the company. He finished working for the respondent in May 2008 and has been unemployed since then.

Under cross examination he agreed that there is no reference to a continental shift in the Registered Employment Agreement which sets pay and conditions in the printing industry. He confirmed that after the merger occurred in 2005 he worked fewer hours per week than he had worked prior to the merger. He never received written confirmation from his employer that he would be paid a shift premium. He was a better qualified printer than his colleague who operated the digital printer but he agreed that this person had longer service with the company than he had. The witness never received a warning from the company and was never threatened with dismissal. He never received a contract of employment from the company. He could certainly have become a manager but agreed that he had never done a management course. In reply to questions from the Tribunal the witness accepted that he was paid a higher rate of pay than the rates stipulated in the Registered Employment Agreement.

A witness for the claimant gave evidence that he worked as a production manager for the respondent until February 2006. He was the claimant's production manager. He gave evidence that the claimant's production rate was higher than the other printers and he would have been suitable for a manager's role.

The next witness for the claimant gave evidence that he is a Regional Officer with AMICUS trade union. He was contacted by the claimant around Christmas 2007 and represented him thereafter in his negotiations with the respondent. He was informed by the claimant that there had been no redundancies in the company since he had commenced working for the company. The trade union represented by the witness does not accept a last in first out policy as a means of selection for redundancy. There are other options that could have been explored such as job rotation, short-term arrangements or voluntary redundancy. He discussed these options through the industrial relations process but the company made no effort to go through the disputes procedures as outlined in the Registered Employment Agreement.

Respondent's Case

The respondent merged with another entity in 2005 and while the claimant's wages were regarded as uncompetitive they were nevertheless not reduced. The managing director at the relevant time referred to shift allowances, bonuses, and other payments but emphasised that no shift allowance was paid for a continental shift.

The production manager outlined the background to the reasoning behind making the claimant redundant. Orders were decreasing and there was a general downward in business from early 2008. By the end of March that year he warned some of the workforce including the claimant of the possibility of redundancy. The claimant had the shortest service of the three printers and the witness felt that that factor had to be taken into consideration for the selection process. By May 2008 the respondent decided to cease with his services. The witness told him at that time that there were no further work opportunities for him with the respondent. He was not prepared to offer him a "menial" position and since there were no other suitable jobs available the claimant was made redundant. The claimant's shift allowance issues had no bearing on that decision.

Determination

The evidence in this case established that the claimant had the least service of the three printers employed at the company. Notwithstanding the fact he was the highest paid and probably the most efficient printer, he was selected for redundancy because he had the least service.

The respondent has established there was a redundancy situation and that the claimant was fairly dismissed. In the circumstances, the claim under the Unfair Dismissal Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

