

## EMPLOYMENT APPEALS TRIBUNAL

### CLAIM OF:

Employee

- claimant

### CASE NO.

UD109/09  
RP93/09  
MN103/09  
WT42/09

### Against

Employer

- respondent

### under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**  
**ORGANISATION OF WORKING TIME ACT, 1997**  
**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**  
**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms O. Brennan BL

Members: Mr J. Goulding  
Mr. S. O'Donnell

heard this claim at Dublin on 11th May 2009.

### Representation:

Claimant: In person.

Respondent Mr. Ray Flaherty, Polaris Human Resources, 60 Main Street,  
Applewood Village, Swords, Co. Dublin

The determination of the Tribunal was as follows:-

The claimant commenced employment on 1<sup>st</sup> October 2001. He was employed as a bus driver. He worked nine and half hours five days a week. In October 2005 he requested a change in his working hours to weekend work and was duly facilitated. The claimant's working hours were reduced in August 2006 and further reduced in November 2007. He was not furnished with a new contract of employment. The last day he worked was 15<sup>th</sup> April 2008. After that date he was told that no work was available for him. He attended a meeting together with his union representative and a Director of the company on 2 July 2008. He was told he was too old and that insurance cover could no longer be effected for him. The claimant contended he was fired on 2 July 2008. He was the most senior driver. Negotiations took place towards the end of 2008

between his union representative and the respondent. In January 2009 he met with his union representative who advised him to accept a settlement offered by the company. He sought advice elsewhere and declined the settlement offered by the respondent. He received his P45 by post on 8<sup>th</sup> May 2009.

A representative for the company outlined the respondent's position. The claimant's contract of employment changed in August 2006 and he then worked on a casual basis. When work was available it was given to him. Because of a change in company's insurance policy effective from 1<sup>st</sup> April 2008 the respondent was unable to effect insurance cover for the claimant. The claimant was verbally notified of this in April 2008. A meeting was held with the claimant on 2<sup>nd</sup> July 2008 at which the Managing Director explained that the claimant could not be given any further work in his capacity as a bus driver due to a change in the company's insurance policy. Accordingly, the services of the claimant were no longer required.

Discussions commenced in December 2008 with the claimant's union representative and in March 2009 agreement was reached. The respondent understood that the claimant was happy with the settlement and the claimant's representative informed the respondent that the matter had been resolved. On 15 April 2009 the settlement cheque was returned to the respondent by the claimant.

**Determination:**

Having considered the evidence of both sides in this matter the Tribunal prefers the evidence of the claimant and finds that the claimant's employment was terminated on 2 July 2008. The Tribunal finds that claimant was made redundant and that he is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria:

Date of Birth:	24 December 1936
Date of Commencement:	1 October 2001
Date of Termination:	2 July 2008
Gross Weekly Wage:	€540.00

This award is made subject to the claimant fulfilling current social welfare requirements in relation to PRSI contributions.

As remedies under the Redundancy Payments Acts, 1967 to 2007 and the Unfair Dismissals Acts, 1977 to 2007 are mutually exclusive, the unfair dismissals claim fails.

The Tribunal also awards the claimant €2160.00 being the equivalent of four weeks notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

As no evidence was adduced under the Organisation of Working Act, 1977 the claim is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)