

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

UD188/2009

RP180/2009

MN184/2009

against

Employer – *respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms O. Brennan

Members: Mr. T. O'Sullivan
Mr G. Lamon

heard this claim at Dublin on 20th July 2009

Representation:

Claimant(s) : Padraic Lyons BL instructed by Jane O'Sullivan, Daniel Spring & Co., Solicitors,
50 Fitzwilliam Square, Dublin 2

Respondent(s) : Mr Bart O'Donnell, Solomon Legal, 55 Oughtath Road, Killaloo,
Co. Derry, Bt47 3tr

The determination of the Tribunal was as follows:-

The Chairperson of the division amended the T1A to only include the above respondent.

Respondent's case

The respondent was a motor dealership that ceased trading on the 29th May 2009. The chief financial officer of the respondent's group gave evidence. The claimant was employed as

he assistant parts manager in one of the groups companies. In the second half of 2008 the motor industry started to contract, the respondent incurred substantial losses during this period. The company took steps to try and curb these losses. As part of this exercise this witness examined the wages and prepared a list of all employees, their position and gross pay for the directors. At this time they had twenty-six employees. The accounts manager was on sick leave and his assistant was on maternity leave, so the accounts department could not afford to lose staff. The sales department was revenue generating so the respondent decided not to make any sales staff redundant. The service department was busy so no mechanics were made redundant.

It was decided that it would choose a management position that would not affect front line sales. The claimant was employed as the assistant parts manager. The claimant contended that the parts sales had increased in 2008, this witness explained that while at the time the claimant was made redundant sales were up this was because another motor dealership had closed down, however parts sales overall decreased in 2008 compared to 2007.

Under cross-examination he accepted that he could not give an understanding of the claimant's job as he was based in a different office in the respondent group. He did not make the decision to make the claimant redundant.

In replying to questions from the Tribunal he confirmed that a position for a trainee parts advisor was advertised on the 20th October 2009 and was filled subsequently, this together with the claimant made a saving of €18,000, per annum for the respondent. However he reiterated that it had made additional savings in the accounts area and had previously lost two junior sales positions through natural wastage. Other steps were also taken to try and reduce their stock of second hand cars. Three directors had decided on the claimant's redundancy and that no redundancy should retract from sales.

All other employees of the respondent were made redundant in April 2009.

Claimant's Case

The claimant gave evidence that he was employed as the assistant parts manager and described the work he undertook on a daily basis. He explained that there was no prior discussion or consultation with him before he was made redundant. He was told orally and he had to request his redundancy notice in writing. He did not accept the statutory amount. He referred to the advertisement for the trainee parts advisor and the duties outlined in this were part of his position. He felt if he had been kept on until the following May he may have obtained a position with the company who took over the dealership. A number of his ex colleagues were successful in gaining employment with the new dealership.

Under cross-examination he explained his level of pay reflected the additional responsibility he had as assistant parts manager. He did cover for the parts manager when required however he could not have done the managers job in relation to warranties. He accepted that the trainee parts advisor duties were a small part of his role.

Determination

Having heard the evidence the Tribunal were concerned in that the respondent did not have a representative who could adequately deal with the issues which were before the Tribunal.

The Tribunal accepts that the company did not engage at any time with the claimant relating to the termination of his employment, there were no discussions, no consultation process and written notification was only given to the claimant when he requested same from the company. No other member of staff was chosen for redundancy at this time.

The Tribunal finds in favour of the claimant and deem he was unfairly dismissed and award him the sum of €79,100.00 which is the equivalent of two years salary. This award is inclusive of the claimant's statutory redundancy.

The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 was withdrawn at the commencement of the hearing.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sad.) _____
(CHAIRMAN)