

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD687/2008
MN626/2008

against

Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. G. Phelan
Mr. A. Kennelly

heard these claims in Limerick on 20 April 2009

Representation:

Claimant(s) :

Mr. Kieran O'Brien, O'Brien Associates, Solicitors, Mill
House, Henry Street, Limerick

Respondent(s) :

Mr. Neil O'Dwyer, Grant Thornton, Chartered
Accountants, Mill House, Henry Street, Limerick

The determination of the Tribunal was as follows:-

The claimant claimed to have been a lorry driver for the respondent company from 8 May 2007 to 23 June 2008 when he was dismissed without explanation or notice. He had been told that the business was under new management but no consultation had taken place with him. If a transfer of undertaking had occurred he felt that he should have at least been advised prior to this happening. The claimant stated that he had not been subject to any disciplinary proceedings at any time during his employment and that he could not understand why his employment had been terminated.

In response, the liquidator's representative stated that, from his review of the books and records of the company and the liquidator's discussions with RR (the company's managing director), he

understood that the company ceased to trade on or about 20 June 2008. This was due to a decrease in business activity, cashflow difficulties and the illness of RR who was diagnosed with cancer in May 2008. The representative also understood that all employees, including the claimant, were advised of the cessation of the operations of the company on or before 20 June 2008. Based on the liquidator's review of the payroll records of the company, all employees, including the claimant, were paid up until 20 June 2008.

During July and August 2008 the directors of the company consulted with advisers and decided that the company had to be wound up. The liquidator was appointed at a meeting of the shareholders on 9 September and his appointment was confirmed at a subsequent meeting of creditors of the company.

The claimant's representative made the point that he had only just received a copy of the liquidator's written defence and that there had been plenty of time for the liquidator to provide it before the day of hearing. However, the claimant's representative did not dispute that the Tribunal had little option but to accept the tardy defence. He did state that the claimant's complaint was brought before the company was in difficulty, adding that RR had said that he had health problems but that the claimant's job was safe.

Giving sworn testimony, the claimant said that he had started for the company on 8 May 2007. As a lorry driver, he was doing deliveries and collections around southern counties. The company was contracted to do deliveries for a company (JNS) which had articulated trucks but no rigid ones.

The claimant thought that it was around April 2008 that he got a call from RR who said that he had got a serious medical diagnosis, that he would take a year out and that he was recommending the claimant to JNS who were looking for a driver. RR was adamant that the claimant had a job and that it was secure. The claimant took it that his job was safe.

No job with JNS materialised for the claimant. He got another job a week or two later but it only lasted until October (i.e for twelve or thirteen weeks) and he had been looking for work ever since.

Asked if he wanted to cross-examine the claimant, the liquidator's representative merely indicated that there might have been a possibility of passing on the business but that there was "no concrete proof of a transfer of undertaking". Redundancy claims had been conceded to employees who, unlike the claimant, had over two years' service with the company.

Questioned by the Tribunal, the claimant confirmed that JNS had had no rigid trucks in Limerick and that RR's company had done work for JNS but the claimant said that he did not know if JNS had given a job to some people. JNS wanted some people to do deliveries for them. Another operator (NH) "came down to do it". When the claimant's driving licence and bank details were taken he thought that he would get work. NH took over from RR's company.

The claimant told the Tribunal that, when RR got sick, he (the claimant) "thought that he (RR) would be back".

Determination:

The Tribunal accepts that the managing director might have meant well, told the claimant his job was safe, promised a job and tried to get jobs for people but had not been able to deliver. The Tribunal accepts that the company went into liquidation and that the claimant was unfortunate (especially as he did not have enough service for redundancy) but not that he was unfairly dismissed within the meaning of the Unfair Dismissals Acts, 1977 to 2007. The claim under the said legislation fails.

It was not established to the satisfaction of the Tribunal that the company committed any breach of the Minimum Notice and Terms of Employment Acts, 1973 to 2005. The claim under this legislation also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)