

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO's.

EMPLOYEE     -*appellant*

UD1314/2008

MN1214/2008

WT534/2008

against

EMPLOYER     -*respondent*

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Mr G. Phelan

Mr D. McEvoy

heard this claim at Limerick on 7th July 2009

#### Representation:

Claimant: Ms. Deirdre Canty, Assistant Branch Organiser,  
Siptu, 4 Church Street, St. John's Square, Limerick

Respondent: XXXXXXXX MD of respondent company,

#### **Background:**

The respondent company is a packaging company. One of their main customers is a large multinational company based in Ireland. The multinational company made over 500 work positions redundant as a result the respondent company cut its workforce from 141 to 119 and the respondent redeployed staff. The claimant was moved from a three-cycle shift pattern to a basic day-shift pattern.

The respondent contends that the claimant was uncooperative with this change. The claimant contends that he tried to raise a grievance, that he was treated unfairly because he was a member of a trade union.

#### **Respondent's case:**

The Tribunal heard evidence from the production manager. He explained that the factory was re-structuring and some employees were to be moved within the organisation. He personally spoke

to the claimant to tell him that he was being moved. Within the next few hours after he had been told, the claimant told him that he wasn't happy. He told the claimant that there was very little that he (the supervisor) could do about the situation because of the (economic) climate.

The claimant told him that he did not have enough notice to deal with the change in shift cycle so he told the claimant that he would defer it for a week. The claimant returned to him and told him that he was not happy because of the financial situation. He explained to the claimant that he was not the only person that had to deal with work changes and that some of his colleagues had lost their jobs.

The claimant moved to the new area and during this move he asked for a meeting with the company director. The director couldn't meet him because he was too busy. The manager met with the claimant and the claimant's supervisor. He spent some time explaining the situation to the claimant

He understood the claimant's situation financially and that the claimant felt that it was not fair that he was losing his shift allowance. He told the claimant that from the company's point of view they had to take decisions. He told the claimant that he still had a job. They concluded the meeting and the conclusion was not satisfactory.

Over the next few days a female employee complained to her supervisor that the claimant was impacting on her targets. The supervisor had a word with the claimant. The claimant then told the supervisor that he would "take it to the union and win my case".

The supervisor took the claimant to a disciplinary meeting. The claimant was afforded a representative. The claimant was told that what he said was gross misconduct and he was on a final written warning.

The claimant was not happy and returned some time after with a doctor's note. Later on he then returned with a doctor's cert to say that he was fit.

They moved the claimant from the box assembly area to the palletising area. The claimant continued to adversely affect productivity. They therefore moved him to the foaming area. Overall the claimant was moved to three areas.

The manager explained to senior management that they were having problems with the claimant. He told the management of the procedures that they had followed and that the claimant was on a final written warning. He also explained that he could not have a supervisor complaining every day about the situation. He deliberated with the management team and then they told him that he could carry out the dismissal. He called the claimant and his representative and went through with the dismissal.

The witness explained that the dismissal was to do solely with the claimant's performance. Even though the claimant had been brought through the disciplinary procedure his performance had not improved.

In cross-examination the witness was asked if the grievance procedure was explained to the claimant and the witness replied that he did not know. He was asked if the claimant was offered an appeal of the final written warning and he replied that he could not remember.

**Claimant's case:**

The Tribunal heard evidence from the claimant. On his return to work from holidays in mid to late September 2008, he was told that he was to move to a different department. He knew that he would then be paid less. He was not happy because of that as he had a wife and children to support.

He was happy with the work, however he did have a problem with packing, as he could not bend enough. He thought that he might still get the same amount of money when he was moved because of his contract of employment. He raised it with his supervisor and did not get an answer. He informed the supervisor that if he did not get an answer to his question, then he would go to the union for advice.

The claimant felt that his supervisor should have offered him an appeal of the written warning. He also felt that the interpreter, who worked as a supervisor, was not good and was interpreting for the company's benefit. He felt that the employees who were not in the union are still employed there now. He had been the longest person in re-cycling and, at the time, was the only person moved to the server line. He was the only person moved from the three-cycle shift.

In cross-examination he was asked if he was aware, from the time of his recruitment, of the different shift allowances and he agreed he did. He was aware of one other person who was moved after he was. He was asked if he thought his work performance was satisfactory and he replied that it was teamwork and that his colleagues did not complain; the only problem was when he packed a pallet, in that he could not bend down properly.

The Tribunal heard evidence from the claimant as to his loss. He obtained work six weeks after his employment was terminated and his pay in the new employment was at a higher amount than it was in the respondent employment.

**Determination:**

The Tribunal unanimously determine that the dismissal was unfair. The respondent failed to address the concerns of the claimant regarding the change in his work shifts. The change in the claimant's shift pattern meant he did not get a 25% shift allowance; the three-cycle shift attracted a 25% allowance.

Notwithstanding the aforementioned, the claimant did contribute to his dismissal, in being somewhat obstructive. Accordingly, the Tribunal awards the claimant the sum of €1,215.00, under the Unfair Dismissals Acts, 1977 to 2007.

Under the Minimum Notice and Terms Of Employment Acts, 1973 to 2005, the Tribunal awards the claimant the sum of € 405.00, this being one weeks notice.

No evidence was adduced regarding holidays. Accordingly, the claim under the Organisation of Working Time Act, 1997, is dismissed.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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