

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD499/2009, RP522/2009
MN518/2009, WT220/2009

against

EMPLOYER

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 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: Ms N. O'Carroll-Kelly B L

Members: Mr M. Noone
Mr. J. Dorney

heard this claim at Wicklow on 26th January 2010

Representation:

Claimant : Mr John Kennedy BL instructed by
McKenna Murphy, Solicitors, Stonebridge Close, Shankill, Co Dublin

Respondent : Mr. Don Culleton, Local Government Management, Services Board,
35/39 Ushers Quay, Dublin 8

The determination of the Tribunal was as follows:

Respondent's Case

Among the terms and conditions of employment for retained firefighters are that they should reside and work within a short distance of the fire station where they are stationed. Section 5 (b) of the regulations state: *Where a change of residence or place or type of work adversely affects a firefighters's availability or ability to respond within the required time to his/her station, he/she shall have his/her service terminated.* The senior assistant chief fire officer at the Bray station told the Tribunal that this rule and related ones were clear-cut. She added that the respondent needed a full time commitment from their retained fire fighters. The ideal response time for part-time retained firefighters to reach their stations and commence operations are four to five minutes. The average in Bray in 2009 where the claimant was based was six minutes and

forty-seven seconds.

An officer from the human resource section who was involved in the recruitment of retained fire fighters confirmed the conditions of employment for that group. She highlighted the response time and the clause that stated that in the event their availability is compromised by their changed residence or work place then the affected firefighter was required to resign.

The Bray fire station contained two crews or pumps which ideally amounted to fifteen firefighters. Each unit needed as a minimum five people to adequately operate. Prior to September 2007 when two firefighters lost their lives that station operated on a system of a first call out followed by a second one should it be required. Following that tragedy that station altered that system so that every firefighter had to be available for every incident. On 20 August 2008 the assistant chief fire officer received a letter from the claimant in which he was seeking to take nine weeks leave of absence to undertake a training course commencing on 1 September. Following a meeting between that officer and the claimant in late August this leave was granted subject to certain conditions. The assistant chief fire officer did not realise at the time that this training course for the claimant was leading to a job for him in the prison service.

The chief fire officer who was familiar with the claimant's case wrote to him on 3 November 2008 requesting information on his current job description and work location. These two gentlemen met ten days later. The claimant confirmed that both his job and work location had now changed. His work place was now in Clondalkin, west Dublin, which he said, was twenty minutes driving time from Bray. His new employment duties obliged him to work three twelve-hour shifts a week. In response the chief fire officer told him he had no option but to terminate his employment. The reason for that dismissal lay in section 5 (B) which according to this officer the claimant no longer met. At that time the claimant neither questioned nor protested at that decision.

Claimant's Case

Following a period of training the claimant took up duties as a retained part-time fire fighter in September 2006. He recognised and accepted he signed the regulations and conditions of service for that grade. His residence and place of employment at the time allowed him to comply with those requirements. From September 2007 all retained firefighters at Bray were required to be on call all the time. He met the chief fire officer in mid November to discuss his changed situation. By that time the claimant had secured new employment some thirty kilometres from the fire station. He explained to the chief fire officer that his new employment was based on a week-on, week-off basis. In that respect and the fact that he worked on a shift pattern, the claimant offered his services to the respondent while off duty from his new employer. It was his hope that he could maintain his position as a retained firefighter-a job he had a passion and commitment to- while embarking on a new career elsewhere.

The claimant received official confirmation that his service with the respondent was to cease on 30 November 2008. The letter containing that news was dated 17 November and signed by the chief fire officer.

Determination

Having carefully considered this case the Tribunal finds that the dismissal of the claimant was fair. The Tribunal is satisfied that the claimant was fully aware of the terms and conditions of his employment with the respondent particularly clause 3 of his duties and section 5 of his contract. Once the claimant's commenced duties at Clondalkin he could no longer adhere to those conditions. Therefore his claim under the Unfair Dismissals Acts, 1967 to 2007 must fail.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also falls as the claimant received his statutory notice.

The appeal under the Organisation of Working Time Act, 1997 also falls for want of prosecution.

The appeal under the Redundancy Payments Acts, 1967 to 2007 was withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

