

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - appellant

CASE NO.
UD369/2009
MN373/2009

against

EMPLOYER - respondent

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: Ms. K.T. O'Mahony BL

Members: Mr. D. Hegarty
Mr. D. McEvoy

heard these claims in Cork on 11 February 2010

Representation:

Claimant(s) :
Mr. Kevin Hegarty, Solicitor,
Brian Dillon House,
Dillons Cross, Cork

Respondent(s) :
Ms. Margaret Lucey, Timothy Lucey & Company, Solicitors,
North Square, Macroom, Co. Cork

The determination of the Tribunal was as follows:-

Summary of the Evidence

The respondent had a contract with a drinks company (DC) to collect bottled beer from its brewery, offload it in its warehouse and deliver it onwards over a period of time. Around 99% of the respondent's work was the collection and delivery of brand M beer for which DC held a franchise. Another client, Co. B loaded its product onto trucks and parked them in the respondent's yard overnight. The claimant commenced employment as a driver with the respondent in May 2007 and later loaded trailers. There was a dispute between the parties as to whether there was a

short break in the claimant's service with the respondent in or around May 2008.

As early as March 2007 Co. H was attempting to take over DC and the take over was announced in early November 2008. Co. H failed to retain the M franchise, which comprised around 99% of the respondent's work for the former owner of the brewery. Co. H had its own arrangements for delivering its drinks. The respondent's General Manager, being aware of the uncertain situation, found alternative employment at the end of July 2008. In late December 2008 Co. B closed down with a further loss to the respondent. The respondent was in a winding down situation.

It was the respondent's evidence that on the claimant's return to work after the Christmas holidays on 2 January 2009 the respondent informed him that his employment would be terminated one week later, on 9 January 2009. During that week the claimant asked him to extend the period of his notice but he had no work to give him. It was the claimant's evidence that he had not been given any notification of the termination of his employment. He sustained an injury at work on 9 January and was removed to hospital. While he was in hospital the respondent posted his P45 and he received it a few days later when he came out of hospital.

Three other employees were respectively made redundant in February, March and April of 2009. Each of these had longer service than the claimant. By early May 2009 the respondent's stock controller was its only employee and that warehouse is now empty.

Determination

The Tribunal is satisfied that there was a redundancy situation in the respondent's business at the time of the claimant's dismissal. There was no issue before the Tribunal as to whether the claimant's selection for redundancy at that particular time was unfair. Accordingly, the dismissal is fair and the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Whilst there was a dispute between the parties as to whether there was a short break in the claimant's service with the respondent in April/May 2008 it is not necessary for the Tribunal to make a finding on the issue because it has found that the dismissal was by reason of redundancy and the issue of one year's continuous service to entitle him to bring a claim under the Unfair Dismissals Acts does not arise. Furthermore, it is not necessary to resolve this issue to determine the claimant's entitlement under the Minimum Notice and Terms of Employment Acts 1973 and 2005 because the claimant, not being available for work immediately following his dismissal by virtue of his accident, a claim under the Acts do not arise.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)