

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *claimant*

UD1475/2009

against

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr P. Pierson
Mr. S. O'Donnell

heard this claim at Tullamore on 4th May 2010

Representation:

Claimant(s) : XXXXXX, Tullamore, Co Offaly

Respondent(s) : Joseph Brophy & Co., Solicitors, Patrick's Court, Partick
Street, Tullamore, Co. Offaly

The determination of the Tribunal was as follows:-

Respondent's Case

Witness for the respondent gave direct evidence that he operates a fruit and vegetable business providing fresh fruit and vegetable to local retailers. He hired the claimant in February 2006 on a part-time basis whereby the claimant worked 3 days per week until Summer 2008. From then until February 2009 he worked 2 days per week and thereafter worked full-time (5 days per week) until the termination of his employment in July 2009. The claimant worked as a potato peeler and occasionally worked on carrot slicing and dicing.

The witness told the Tribunal that he employed two other employees, one as a driver and another who carried out similar duties to the claimant plus onion preparation, parsnip preparation, coleslaw manufacturing, and soup mix preparation. The claimant's work performance did not compare favourably with his colleague and he was far less productive and proficient than his colleague.

Due to the economic downturn and the deterioration in business it was no longer financially viable

to retain the two employees in employment. He made a decision to make the claimant redundant. The claimant was selected for redundancy based on economic grounds and his unsatisfactory work performance. He notified the claimant that he was being made redundant on 2 July 2009. He issued him with an RP 50 form which the claimant refused to sign.

Under cross examination he confirmed that the claimant was never issued with a verbal or written warning in relation to his work performance. He denied that the claimant's age was a factor in determining his selection for redundancy. He denied that the claimant ever requested a pay increase.

In response to questions from the Tribunal he confirmed that he had received complaints about the quality of the claimant's work and he had informed the claimant of those complaints. He did not warn the claimant about his work performance.

Claimant's Case

The claimant gave direct evidence that he worked for the respondent from February 2006 until July 2009. He worked an average of 28 hours per week. He worked as a potato peeler generally but also worked for a two week period preparing carrots. He acknowledged that his work area could be dirty on occasions but his employer never spoke to him about this. He enjoyed a good relationship with his employer until April 2009 but the nature of the relationship changed in April 2009 when he sought to be paid the National Minimum Wage.

Under cross examination he confirmed that he was not paid an hourly rate but was paid for each bag of potatoes that he prepared. He was of the view that he was selected for redundancy because he requested that he be paid the National Minimum Wage.

In response to questions from the Tribunal he confirmed that he did not sign his redundancy form (RP50) because he felt he was unfairly dismissed. He was issued with a P45 and has been unemployed since the termination of his employment.

Determination

The Tribunal carefully considered the evidence adduced and is not satisfied that the claimant was unfairly selected for redundancy. Accordingly the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

