

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO.
UD1443/2009
RP1618/2009
MN1423/2009
WT428/2010

against

EMPLOYER - respondent

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. F. Crawford BL

Members: Mr. P. Pierce
Mr. J. Maher

heard these claims in Dublin on 13 July 2010

Representation:

Claimant(s):
In person

Respondent(s):
No legal representation

The determination of the Tribunal was as follows:-

In his claim the claimant stated that he was a goods inwards manager and that, having started with the respondent in 2001, he was asked by the respondent in 2009 to take a ten per cent wage cut. He refused but said that he would take a ten per cent cut in "hours per week". The respondent refused the claimant's compromise and told him that, because of his refusal to take their pay cut, it was

making him redundant. He said that he did not think this was a proper reason to be made redundant and asked the respondent to “go to arbitration”. The respondent refused and gave him four weeks’ notice on 17 June 2009 which meant that he would “finish up” on 15 July 2009.

On 18 June 2009 the claimant was told that the respondent was paying him in lieu of notice and that he could finish on that day (which he did). The claimant had one week’s holidays booked within that period. The respondent paid him four weeks’ notice and four days holidays but he thought that he should have received four weeks’ notice and nine days’ holidays as the respondent counted his week’s holiday as part of his notice.

In its defence the respondent asserted that on 19 February 2009 a memo was circulated to all staff stating that, in view of the unprecedented drop in turnover and consequent loss of profits, it was necessary to seek a 10% cut in wage levels. They were asked to indicate their acceptance or rejection of this proposal. A copy was sent to the claimant as he was absent from work due to a work-related accident.

An undated letter addressed to “Management” (signed by eleven employees and signed on behalf of the claimant and another employee) offered an alternative proposal of an immediate 5% pay cut coupled with a further cut of 5% in six months’ time or of reducing the working week by 3.5 hours with a corresponding decrease in wages and general overheads. The total number of signatories represented approximately 68% of staff.

At a subsequent meeting between management and staff it was stressed that, while regrettable, the 10% cut in wage levels was the only viable option in the opinion of the respondent. Staff were informed that the alternative to non-acceptance of the wage cut would be redundancy. Three members of staff opted for redundancy.

On 23 February 2009 a letter was received from the claimant stating that he was willing to accept a 10% reduction in working hours but was not agreeing to a 10% reduction in wage levels. He said that the situation could be discussed further on his eventual return to work. As he had not been present at the meeting he was informed during a telephone conversation with the respondent’s financial controller (hereafter referred to as TP) that the alternative to non-acceptance of the 10% wage cut was redundancy.

The claimant returned to work on 25 May 2009. On 17 June 2009, having refused to agree to take a 10% cut in wages he was formally given notice of redundancy. On 18 June 2009 it was decided to pay him in lieu of notice and he ceased employment that day with a payment of four weeks’ wages and four days’ holiday pay. Included in his notice period was one week’s vacation which he had booked some months previously. Advice was sought from a relevant government department as to the treatment of the holiday week within the period of notice. The respondent was allegedly advised that “pre-booked” holidays formed part of the period of notice.

A redundancy form (RP50) was completed and signed by both parties. A copy (together with a redundancy cheque) was given to the claimant on his departure. The cheque was cashed on 22 June 2009.

In common with other staff the claimant was made redundant as a result of electing not to take a 10% cut in wages. Company turnover continued to fall thereafter.

Determination:

The Tribunal dismisses the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, on the grounds that it was not established that the respondent had paid less minimum notice than required by the said legislation.

However, the Tribunal does not accept that the respondent was absolved from paying holiday pay because the claimant's holiday week fell within his notice period. The Tribunal finds that the claimant was entitled to both his minimum notice and his holiday pay. Accordingly, the claim under the Organisation of Working Time Act, 1997, succeeds and the Tribunal awards the claimant the sum of €616.35 (this amount being equivalent to one week's gross pay) under this legislation in respect of one week's holidays that was outstanding to the claimant (because he was given notice of termination before he took the said holiday).

The appeal lodged under the Redundancy Payments Acts, 1967 to 2007, falls because the case was prosecuted as an unfair dismissal claim and the Tribunal makes an award to the claimant under unfair dismissal legislation.

The unfair dismissal claim succeeds because the claimant was made redundant without adequate discussion as to whether there might have been any workable compromise. There was a refusal to engage with him although he had been given to believe that he would be having a talk with the respondent's managing director. Therefore, the respondent's process in terminating the claimant's employment was unfair. The Tribunal unanimously allows the claim under the Unfair Dismissals Acts, 1977 to 2007, and, in all the circumstances of this case, deems it just and equitable to award the claimant compensation in the amount of €7,000.00 under the said legislation in addition to the redundancy lump sum he received after his employment with the respondent was terminated.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)