

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO.
UD943/2009

against

EMPLOYER - respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. G. Hanlon

Members: Mr. F. Cunneen
Ms. A. Moore

heard this claim in Dublin on 15 March 2010

Representation:

Claimant(s):
Ms. Claire Lehane, Michael O'Byrne, Solicitors,
Kenlis Place, Kells, Co. Meath

Respondent(s):
Mr. Barry O'Donoghue, Ferrys, Solicitors,
Inn Chambers, 15 Upper Ormond Quay, Dublin 7

The determination of the Tribunal was as follows:-

The claimant was employed at the respondent's premises from late 2007 until 18 February 2009 when he was let go with one week's pay in lieu of notice due to a downturn in the economy. However, it was alleged that this had not been a genuine redundancy because another man had been taken on to replace him.

It was contended on behalf of the respondent that this had indeed been a genuine redundancy but that the claimant had not had the requisite service to have an entitlement to a statutory redundancy payment.

Determination:

After witnesses had given sworn testimony, the Tribunal carefully considered the evidence adduced. The respondent's case was that, faced with difficult economic circumstances, he had in

December 2008 offered the claimant a three-day week which the claimant had rejected and that in February 2009 he had had to make the claimant redundant before subsequently giving some shifts to another man whose shifts later increased in number. The claimant's case was that the December meeting had never taken place and that he had simply been made redundant in February 2009 after he had been absent for some weeks for medical reasons.

The Tribunal does not believe that the respondent tried to orchestrate the removal of the claimant. It is accepted that the respondent was confronted by difficult economic realities that necessitated changes. There was a conflict of evidence as to whether any meeting between the respondent and the claimant occurred in December 2008 but, even if it did take place and a three-day week was offered at that time, there was an onus on the respondent to satisfy the Tribunal that all alternatives to redundancy were fully explored before the claimant was ultimately made redundant. The Tribunal is not satisfied that the respondent had, by the time of termination in February 2009, given enough consideration to other options with regard to the preservation of employment for the claimant rather than simply ending his employment completely by reason of redundancy.

The Tribunal finds that the claimant was unfairly dismissed within the meaning of the Unfair Dismissals Acts, 1977 to 2007. In all the circumstances of the case, the Tribunal determines compensation to be the appropriate remedy and, having regard to the claimant's efforts to mitigate his loss, deems it just and equitable to unanimously order that the respondent pay the claimant the sum of €2,000.00 (two thousand euro) in compensation under the said legislation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)