

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

UD1092/2009

RP1246/2009

MN1106/2009

WT491/2009

against

EMPLOYER

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly Bl

Members: Mr. L. Tobin

Mr J. Jordan

heard this claim at Wicklow on 8th April 2010

Representation:

Claimant:

The claimant in person

Respondent(s) :

The respondent in person

The determination of the Tribunal was as follows:-

Respondent's case

The witness for the respondent gave evidence that the company had taken over the retail outlet in which the claimant was employed. The company wanted to cut costs and having identified a lesser requirement for delivery drivers than previously it was decided to terminate the claimant's employment on grounds of redundancy. There was a need to develop the role of delivery driver so as to include responsibility for generating sales. The witness felt that the claimant was not inclined towards this evolution of the delivery driver role and therefore did not offer him the opportunity to perform this job. The witness confirmed that there were eleven employees in the outlet in question before the claimant's employment was terminated and that currently there is the same

number employed.

Claimant's case

The claimant stated that since the respondent had taken over the outlet in which he was employed there had been a marked increase in the volume of sales and that he had been working longer hours than before.

The claimant was not asked to take on the extra duties of sales man/delivery driver but was adamant that he would have done so had he been asked. The claimant was a sales manager with a previous employer.

Determination

Having considered the evidence presented to it the Tribunal is satisfied that a genuine redundancy situation did not exist within the respondent company at the time of termination of the claimant's employment. Therefore the Tribunal finds that the claimant was unfairly dismissed from his employment and awards him €18,160.00 under the Unfair Dismissals Acts, 1977 To 2007. This figure takes into account and is over and above any amount already paid by the respondent to the claimant in respect of redundancy lump sum.

The Tribunal is satisfied that the claimant was due six weeks notice of termination of employment but received only two and therefore awards the claimant €2,524.80 under the Minimum Notice and Terms Of Employment acts, 1973 To 2005.

No evidence was given in relation to a claim under the Organisation Of Working Time Act, 1997 and therefore this claim is dismissed for want of prosecution.

The claimant withdrew his claim under the Redundancy Payments Acts, 1967 To 2007

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

