

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

EMPLOYEE –**claimant**

UD1488/2009

against

MN1480/2009

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: Mr. J. Revington S.C.

Members: Mr. P. Casey  
Mr. D. McEvoy

heard these claims at Cork on 22 July  
and 16 September 2010

**Representation:**

Claimant: Ms. Rachel O’Flynn B.L. instructed by Mr. Anthony O’Brien,  
A.J. O’Brien & Co. Solicitors, 6 Firview,  
Curraheen Road, Bishopstown, Cork

Respondent: Ms. Margaret Lucey, Timothy Lucey & Co. Solicitors,  
North Square, Macroom, Co. Cork

The determination of the Tribunal was as follows:

The claimant had some twenty years’ experience in the transport industry as a truck driver, a transport and distribution manager and a period where he was self-employed when he joined the respondent, which operates a transport and distribution business, as transport or traffic manager/co-ordinator in September 2006. The claimant did not receive a written contract of employment.

After an initial period working out of the Millstreet depot of the respondent the claimant began

working out of the respondent's Little Island depot from the beginning of 2007. The Little Island depot dealt in large measure with two major clients of the respondent in what are termed as Trunking operations of full loads for one client from A to B. The employment was uneventful until the latter part of 2008 when both major contracts were lost due to both clients reorganising their operations. These losses along with the prevailing economic conditions led to a reduction in the number of truck drivers from 22 to ten. It is the respondent's case that, during the summer of 2008, the claimant declined to drive a truck on an occasion when the respondent found difficulty in replacing an absent driver on a one-off basis.

It is common case that by early 2009 there had been a serious downturn in business for the Little Island operation such that the General Manager had resigned, having found alternative employment, and not been replaced. The respondent was also in the process of taking over another transport company (AC) whose operations fell almost exclusively in to the category of Groupage whereby items of less than a truckload are grouped together on one truck for distribution to multiple locations. In groupage operations there is the necessity for a higher level of administration than with trunking. AC employed both a depot manager and a traffic manager.

On 2 February 2009 the Managing Director (MD) of the respondent had a conversation with the claimant. It is the respondent's position that MD told the claimant on that day of his intention to declare the claimant's position redundant and that he would be kept until the end of the month. The claimant's position is that MD said to him that if he could find another job he should take it because there was no work. When the claimant asked MD if he was being let go he did not get a straight answer. Some two weeks later the claimant spoke to the accountant to seek clarification of his situation and it was confirmed that he was being let go by reason of redundancy from 27 February 2009.

The respondent selected the claimant as a candidate for redundancy as against the two managers with AC because of their experience and familiarity with groupage rather than trunking operations and after the claimant left the employment these two managers moved the AC operation into the Little Island depot. The respondent's depot manager was declared redundant shortly after the claimant was let go.

## **Determination**

The Tribunal is satisfied that there was a genuine redundancy situation existing in the respondent at the time that the claimant's employment was terminated. The Tribunal is further satisfied that the claimant was given notice of the termination of his employment by reason of redundancy on 2 February 2009. While the Tribunal accepts the logic behind the respondent's decision to retain the managers from AC who were experienced in groupage, there is no evidence to show that any objective criteria were made known to the claimant at the time of his selection for redundancy. Neither was there any consideration of the claimant for any alternative positions, in particular truck driving, at which he is well qualified. The Tribunal finds that the way the termination was handled was such as to render the dismissal unfair by way of the unreasonable conduct of the respondent.

Having considered the submissions of both parties the Tribunal has concluded that compensation is the appropriate remedy in this case and awards the claimant €8,500-00 under the Unfair Dismissals Acts, 1977 to 2007. In making this award the Tribunal is cognisant that the claimant has already received a lump sum payment under the Redundancy Payments Acts in the amount of €3,564-00.

The evidence having shown that the claimant received his statutory entitlement in this regard the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 must fail.

Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)