

## EMPLOYMENT APPEALS TRIBUNAL

### CLAIM OF:

EMPLOYEE

- claimant

### CASE NO.

MN1118/2009

WT498/2009

UD1103/2009

### Against

EMPLOYER

- respondent

### under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr P. Pierce  
Mr S. Mackell

heard this claim at Naas on 12<sup>th</sup> April 2010 and 11<sup>th</sup> October 2010.

### Representation:

Claimant Mr. Cian Moloney BL, instructed by Wilkinson & Price, Solicitors, South Main Street, Naas, Co. Kildare

Respondent: Mr. Liam Moloney, Moloney & Company, Solicitors, Unit 5, Lawlor's Commercial Centre, Naas, Co Kildare

The determination of the Tribunal was as follows:-

At the outset of the hearing the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 were withdrawn.

### Respondent's Case:

The respondent is a water and wastewater engineering company. It has several divisions, namely domestic pump, supply and installation and operations. They look after local authorities and private clients.

The claimant commenced employment on 11<sup>th</sup> June 2007 as a semi skilled operator. He was furnished with a letter of contract. He worked on the South Leinster Group Water Scheme. The South Leinster Regional Office is located in Naas.

The claimant was held in the highest esteem. The respondent had no issues with the claimant's performance during his tenure. The claimant worked as an assistant to fitter TM and assisted him in the installation of pumps. Qualified fitter roles entail resolving technical problems, and required experience and a skillset and ability to deal with the problem encountered there and then. The claimant reported to the Regional Manager, the lead fitter and to overall engineers. The likely duration of the South Leinster Group Water Scheme was between a year and a half and two years. Each scheme subsequently transfers to operations. DC heads the South Leinster Operations Division. DC supervises staff, provides monthly reports, is involved in troubleshooting and monitors the treatment of the schemes.

A position of fitter became available on the operations side. The skillset required for the position entailed analysing the problem, ability to troubleshoot and when presented with a problem being able to find a solution. Three staff were available to apply for that position. A meeting was held in Carlow to discuss the experience and suitability of the three staff in question. An employee EW commenced working for the respondent in November 2008. He had previously worked in a similar company to the respondent. He had a high level of experience and was extremely knowledgeable. EW was offered and accepted the role in the operations division.

The Regional Manager identifies staff required for projects and discusses them with the HR Manager. In October/November 2008 he advised the claimant that it was highly likely that he would be made redundant in December 2008. By letter dated 12 November 2008 the claimant was formally notified that his contract would terminate on 19<sup>th</sup> December 2008 and was given a month's notice.

In February 2009 a semi-skilled vacancy arose in the Drogheda region. It was a permanent position with an hourly rate of €21.42. The HR manager made attempts through the claimant's solicitors to ascertain if the claimant was interested in the position. It was decided that should the claimant be interested in the position he would be paid a fitter's rate. The claimant did not attend for that interview. It was presumed the claimant was not interested in the position.

A second vacancy arose in Edenderry on a temporary three month rolling contract. The Regional Manager had no problem recommending the claimant for the position but he was required to attend an interview. The claimant did not attend for that interview either.

### **Claimant's Case:**

The claimant was interviewed by the HR Manager (JM) for an operator's position in May 2007. It was explained to him at the interview that he would work as part of the installations team for twelve months and then move over to the operations division. He was successful at his interview and commenced employment on 11<sup>th</sup> June 2007. He worked with TM in the installations division.

In December 2007 the claimant telephoned JM in relation to his move to the operations division, which was agreed during his interview. JM recalled the conversation and said he would contact the relevant person in the operations division.

In April 2008 the claimant telephoned DC to remind her about the agreement in place. She

contended that she had no knowledge of such agreement. More people were to be taken on in the operations division and the claimant hoped DC would transfer him across to that division.

In August 2008 the claimant again telephoned JM and was informed that there were no positions available in the operations division. In October 2008 the claimant was told that EW was offered a position in the operations division in the South Leinster scheme. The company had secured a contract in Meath but decided to sub contract the work, as it was cheaper for them.

By letter dated 12<sup>th</sup> November 2008 the claimant was given one month's notice of the termination of his employment, which ended on 19<sup>th</sup> December 2008.

The claimant contended that he did not receive any telephone call or documentation in relation to an interview for a job in Edenderry. He received two days' notice of an interview for a fitter's position in Drogheda. He did not apply for that position as it was a fitter's position and he was not qualified for that job. He had also received correspondence through his solicitors from the company, which referred to his unreliability during his tenure. He thought this was unjustified. He worked with TM who drove a van and he was a passenger in the van. He had no control over his timekeeping. When jobs were completed he travelled home with TM. He thought there was ill feeling in the company towards him and he would have felt uncomfortable working for them again.

When asked, the claimant confirmed that he had not brought with him any written evidence of job applications. He verbally gave evidence that he applied for many positions since the termination of his employment. He returned to college in September 2009 and attended a one-year manufacturing pharmaceutical course, which was run at weekends. He secured work in May 2010 for a three-month period and in July 2010 he commenced full time work with Laois Co. Council.

TM, installations fitter, told the Tribunal that the claimant had worked with him. TM's employment was terminated in December 2008. At the commencement of the claimant's employment the claimant told him that he had been promised a role in the operations division. When jobs were completed each day he went home. The claimant travelled in the van with him each day. The company had left a telephone message for him saying he might be interested in applying for a job in Edenderry.

### **Determination:**

The Tribunal carefully considered all of the evidence adduced. It is for the respondent to establish that a redundancy situation arose. The Tribunal determines that a redundancy situation arose in respect of the claimant's employment.

The Tribunal is satisfied that the respondent admitted liability for the claimant's claim prior to the lodgement of the claim to the Tribunal and it is so determined.

In determining the amount of the award to the claimant the Tribunal notes his evidence in relation to the efforts that he made to obtain employment after his dismissal.

The Tribunal is satisfied that in the course of these efforts that (a) an opportunity to obtain a similar position with the respondent arose and (b) that the claimant's admitted decision not to address and pursue this opportunity was in all the circumstances unfair and unreasonable and that this substantially contributed to his subsequent loss of income.

The Tribunal awards the claimant the sum of €7000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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