

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE
- *claimant*

CASE NO.
RP535/2008

UD639/2008
MN570/2008

against

EMPLOYER- *respondent No 1*

EMPLOYER – *respondent No 2*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Hayes BL

Members: Mr G. McAuliffe
Mr J. Flannery

heard this claim at Dublin on 25th May 2010

Representation:

Claimant(s) : Ms. Elaine Finneran BL instructed by Sean O'Ceallaigh & Co, Solicitors,
The Old Bank, Phibsborough, Dublin 7

Respondent(s) : In Person

The decision of the Tribunal was as follows:-

Determination

The claimant was employed by the first named respondent. He had previously been employed by H Ltd. He began employment with H Ltd in September 2004.

H Ltd had two shareholders. They were JD and MH. In the spring of 2007 certain difficulties arose. The culmination of those difficulties was that MH left the company and JD was left to try and rescue matters. In October 2007 he incorporated the first named respondent and continued trading. The new company used the trucks and customers previously had by H Ltd together with several of

the same employees. The claimant told the Tribunal that all he had been told of the change in his employment was that MH had left the company. The Tribunal is satisfied that there was a transfer of undertaking.

The company was experiencing significant business difficulties and had inherited many debts from H Ltd. There was a serious cash flow problem caused by a significant customer refusing to pay them. This resulted in litigation which was ultimately successful. However the company experienced severe difficulties during the interval.

The claimant had previously worked on the whole for a customer called B. In 2006 he began to work for a customer called C. In December 2007 the company was aware that the supervisor in C had difficulties with the claimant and asked for him to be removed to other duties. The company replaced him at C and initially put him to work elsewhere. There was no other work available and he was dismissed. The company, given its significant difficulties was extremely anxious to protect whatever work it had and had acquiesced with C. In the event the contract with C did not last.

The Tribunal is satisfied that the claimant was dismissed by reason of redundancy. The first named respondent was given no option but to replace him and were not in a position to provide any alternative work, given the difficulties that they were experiencing. The Tribunal awards the claimant a redundancy lump sum payment under the Redundancy Payments Acts 1967 to 2007 based on the following information:

Date of commencement of employment: 13 September 2004
Date of termination of employment: 18 December 2007
Gross Weekly Pay: €516.41

This award is made subject to the claimant having been in insurable employment under the Social Welfare Acts during the relevant period.

The claimant was not given any notice of his dismissal. In respect of his claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 the claimant is awarded compensation in the amount of €1032.82.

Given that the Tribunal is satisfied that the claimant is entitled to a redundancy payment, the claim under the Unfair Dismissals Acts 1977 to 2007 must fail. Although the claimant was poorly treated by his employer in the manner of his dismissal, the Tribunal is satisfied that it does not amount in the circumstances to an unfair dismissal.

The Tribunal was impressed by the industry shown by the claimant in obtaining new qualifications and setting up his own successful business, particularly given the large initial expense which at the time must have represented a substantial investment.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

