

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.
UD235/2010

EMPLOYEE *-claimant*

against

EMPLOYER *-respondent*

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr J. Hennessy
Ms S. Kelly

heard this claim at Abbeylax on 13th January 2011

Representation:

Claimant: In person

Respondent: In person

Background:

The claimant in this case is a coach bus driver and the respondent is a coach hire business. Dismissal was in dispute.

Claimant's case:

The Tribunal heard evidence from the claimant. He told the Tribunal that on Wednesday 19th August the owner requested a discussion with him. The owner explained that he would have to save monies and that he would have to terminate his employment. The owner told him that he had to reduce overheads. He told him that he would have to move his son (JOC) to the claimant's route. JOC drove the Edenderry route. The owner told him that he was discontinuing the Edenderry route, as it was a loss maker. The owner told him that his financial advisor told him that if he did not reduce overheads promptly then he would not be in business within a year. The claimant understood why he had to leave as if he did not then the owners son would have to leave.

He continued working for two weeks until the end of the month.

Two to three days after the owner spoke about the overheads situation the owner told him that he was introducing a number of new runs on his route. The owner made a new timetable and the claimant offered to put the timetable on the bus. The new runs were to start on 04th December 2009.

On the last day the claimant worked, the 28th August 2009, he totalled his cash and went into the owner's house/office. There was a woman driver there who was to take over his bus/route. He understood that she had worked part time / casual. He left the employment.

He himself resides along the bus route and understood that a foreign national driver was driving the bus route that he had driven.

The claimant outlined a couple of incidents to the Tribunal that the respondent had mentioned / contended was part of their case.

Respondent's case:

The Tribunal heard evidence from the owner of the respondent company. He asked the claimant to relinquish the bus route/ job for the purpose of giving his son the route as his son had two children, was married and had a mortgage. He asked the claimant if he would leave if they gave him notice to leave room for his son. The claimant agreed and they shook hands. The reason they asked the claimant to leave was to make room for his son as the other drivers had 8 years service or more.

At present they have a couple of "floating" drivers. His son drove the claimant bus route for about a week. Then his son was sent to on a new Malahide route in Dublin, it was the time the aquaduct fell and CIE needed buses. The floating drivers then drove the claimant's bus route. If he had known they would get the new Malahide route he would not have asked the claimant to go. There is a foreign national doing the claimant's bus route now as that person has five years service.

The Tribunal asked the owner why the claimant was not offered the route and he replied, "Well he was working". He was asked if he phoned the claimant and he replied, "No".

Determination:

The Tribunal carefully considered all of the evidence adduced. It is for the respondent to establish, (a) that a redundancy situation arose and (b) that they acted reasonably and fairly to the claimant in addressing this.

1. The Tribunal is satisfied the claimant was in the employment of the respondent in a permanent position as a full time coach driver working a six-day week.
2. It is found that the following the termination of the claimant's employment by the respondent that his position in the respondent company was filled by the respondent by the replacing of his position by the appointment of an employee who hitherto had held a position of a full time / part time driver with the respondent and that this was unfair and unreasonable.
3. The Tribunal finds that prior to this replacement that the respondent failed to offer the claimant the opportunity to resume his position within the respondent company.
4. Therefore it is determined the claimant was unfairly selected for redundancy by the respondent and that this resulted in the dismissal of the claimant.
5. Section 6 (3) of the Unfair Dismissals Acts 1977 as amended by Section 5 (b) (a) of the 1993 Act states that in determining if a dismissal is unfair dismissal regard may be had, I the Rights Commissioner, the Tribunal of the Circuit Court, as the case may be, considers it appropriate to do so, to the reasonableness or otherwise of the conduct of the employer in relation to the dismissal.
6. The Tribunal therefore finds that the redundancy of the claimant by the respondent was an

unfair dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2007 and awards him compensation in the sum of €10,000.00, in respect thereof and the Tribunal so determines.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)