

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE
- *claimant*

CASE NO.
RP1975/2009

UD1761/2009
MN1689/2009
WT732/2009

against

EMPLOYER - *respondent*

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: Mr J. Fahy BL

Members: Mr G. Andrews
Ms H. Henry

heard this claim at Galway on 6th April 2011

Representation:

Claimant(s) : Mr Tony McLynn, T & N McLynn, Solicitors, 7 Pearse Court,
Pearse Street, Athlone, Co Westmeath

Respondent(s) : Ms. Muireann McEnery, Peninsula Business Services (Ireland) Limited, Unit 3,
Ground Floor, Block S, East Point Business Park, Dublin 3

Preliminary Point

The claims under the Redundancy Payments Acts 1967 to 2007 and the Organisation of Working Time Act 1997 were withdrawn by the claimant's representative at the commencement of the hearing.

Claimant's Case

The claimant gave direct evidence that he commenced working as a delivery driver for the respondent company in October 2005. He drove a rigid truck and made deliveries of fruit and

vegetables in the west of Ireland but primarily in Co. Sligo. He worked on a night shift from 2am until 10am. He enjoyed a good working relationship until March 2009. On 30 March 2009 (DC) told him that his working hours were going to be changed to a day time shift and his route was also to be changed to the Clifden area of Co. Galway. The witness was agreeable to this change but asked (DC) to have the following Saturday off to allow his body adjust to day time work. Following this request he was told by (DC) that he was being let go as he, (DC), needed a driver who was licensed to drive an articulated truck. He was shocked by this and requested that (DC) provide him with a reference to help him seek alternative work. When this was not provided he sought the reference on two further occasions and (DC) eventually left a reference for him in the company warehouse. The witness collected the reference on 3 April 2009. When he did so he was shocked to discover that the reference stated that he had left of his own accord. He telephoned (DC) seeking an explanation for this but (DC) was abusive towards him on the telephone and hung up the telephone.

Some months later a prospective employer sought a reference from him from his previous employer. He contacted (DC) again at this stage and sought an accurate reference. (DC) informed him that he would provide him with a further reference but this was never provided to him. He had no further contact with the respondent. He confirmed to the Tribunal that he does not hold an articulated truck license and denied that he told (DC) that he did not want to work on a day shift. He was never given any written documentation relating to the proposed changes to his work pattern and work route. He also denied that he was offered alternative work in the respondent's warehouse.

The next witness (KM) gave evidence that she accompanied the claimant when he collected his reference. She told the Tribunal that the claimant was in a distressed state when he read on the reference that he had left of his own accord.

Respondent's Case

(DC) for the respondent gave evidence that the respondent company secured a new contract with a supermarket chain in March/April 2009. This would have resulted in the claimant having to change from a night shift to a day shift and also being moved to a new route. There would have been no changes to his wages. He offered the claimant these new conditions but the claimant declined the offer as he did not want to work on the day shift. He also declined the offer of work in the warehouse. Following a request he provided the claimant with a written reference in April 2009 and also provided him with a second written reference in May 2009.

Under cross examination he confirmed that the company did not provide the claimant with a contract of employment, terms of employment or any policy in terms of grievance procedures. He confirmed that he back-dated the first reference given to the claimant in April 2009. He posted the second reference dated 26 May 2009 and did not back-date that reference. He accepted that the wording on the two references was different and could not provide an explanation for this to the Tribunal.

Determination

The Tribunal carefully considered the evidence adduced from both parties. The Tribunal notes that there was no contract of employment, no terms of employment and no policy in relation to grievance procedures given to the claimant during his tenure of employment. The Tribunal also notes that the respondent conducted industrial relations with its employees and in particular with the claimant without recourse to any written documentation which has led to a conflict of evidence

between the parties.

In those circumstances the Tribunal prefers the evidence of the claimant and finds that the claimant was unfairly dismissed. The Tribunal awards compensation in the sum of €15,000.00 under the Unfair Dismissals Acts 1977 to 2007. The Tribunal also awards the claimant the sum of €1,100.00 being the equivalent of two weeks pay under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)

