

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:****CASE NO.**

EMPLOYEE

- claimant

UD154/10

RP218/10

**Against**

EMPLOYER

- respondent

**under****REDUNDANCY PAYMENTS ACTS, 1967 TO 2007  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr M. Noone  
Ms. E. Brezina

heard this claim at Naas on 28th April 2011.

**Representation:**

Claimant: Mr. John Kane, SIPTU, 4 Church Street, St. John's Square, Limerick

Respondent: Mr. James Scanlon, William Fry, Solicitors, Fitzwilton  
House, Wilton Place, Dublin 2

The determination of the Tribunal was as follows:-

At the outset of the hearing the claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn.

**Respondent's Case:**

The respondent is a family run business and KG is the Managing Director. Work was plentiful in 2006 and 2007 but in 2009 things started to slow down. The company was financially struggling. The company owned five trucks, 2 drivers worked in the concrete section, 2 in the tipping section, one was a floater and KG also worked as a driver.

KG discussed his concerns with his Accountant. He was advised to re-organise and re-structure the company. He had no option but to make one person redundant.

He sought advice and looked at the different areas within the company. He could step back into the

tipper section so he looked at that area. Both the claimant and BD worked in this area. He devised a matrix.

BD had commenced working for another area of the business in 1998 and had more service than the claimant. He also had been doing shute work while the claimant refused to do this work. The claimant had refused to do night work also. BD's scoring in the matrix was much higher and it was decided that BD would remain in employment.

KG met the claimant on 14 July 2009 and told him that he was proposing to make his position redundant and gave him thirty days notice of the termination of his employment. KG agreed to meet the claimant again and met him on 4<sup>th</sup> August 2009 in his house. The claimant had no issues. He informed him of his redundancy payment figure. KG met the claimant again on 14<sup>th</sup> August 2009 and paid him his holiday pay but explained that due to financial constraints he could not pay him his redundancy payment. However, the claimant signed the RP50 form and KG said it would take some time to have it processed and wished him all the best.

Several months later he saw the claimant driving a truck for another company and was pleased to see he had secured new work.

The claimant had been treated very fairly and was his own boss. He had the use of the truck for his own personal use. He was given time off whenever he needed it.

It was not an easy decision to make and there was no malice involved and it was not personal. The claimant could not be transferred to the concrete section, as he had no training in that area.

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

The claimant worked as a driver for the respondent for nine years. He had previously worked as a driver for another company and had gained much experience and worked with shutes there.

At the time of his redundancy KG told him that he was selected as he was the longest serving member of staff and that he had the money to pay him his redundancy.

After about a month KG told him that he was unable to pay him his redundancy entitlement and asked him to sign a declaration. He received his redundancy payment in March 2010.

He had never received any complaint regarding his work. He had a good employment record. He had never been shown the matrix drawn up by the respondent.

He was capable of doing any type of driving job. When KG bought a new truck in 2007 and shutes were attached KG explained to him that he would not have to use them and that the shutes had been fitted in error. He stuck to his guns and refused to use the shutes.

The respondent had helped him when he built his own house.

He secured part time work in March 2010 and is in receipt of social welfare payments.

### **Determination:**

The Tribunal has carefully considered the evidence adduced. The claimant is making the case that he was unfairly selected for redundancy back in July 2009 when his employer sought to make his driving position redundant. He had been one of six drivers in the workplace including the employer himself.

The respondent produced a matrix, which he had prepared in advance of the selection process. Only two positions were being considered potential candidates for redundancy – the claimant and his colleague BD. The claimant’s principal concern was that his nine years service was not taken into account. However, it was accepted in the course of the evidence that BD had been an employee for a few years longer than the claimant albeit in another part (retail) of the overall business operation.

Another concern related to the alleged refusal by the claimant to be trained up in the use of “shutes”. What seems to have happened is that neither the claimant nor the respondent ever found the need for the claimant to use “shutes”. However, when the time came to select an employee to be kept on in the workplace the claimant did not therefore have all the skills as his comparator BD.

Ultimately, the Tribunal cannot find that the claimant was unfairly selected for redundancy and it was appropriate that the claimant received his redundancy package in March 2010.

The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

