

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

- claimant

CASE NO.
RP2675/2009
UD2341/2009
WT995/2009

against
EMPLOYER
under

- respondent

**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. P. O'Leary B L

Members: Mr D. Moore
Mr J. Moore

heard this claim at Monaghan on 8th June 2011

Representation:

Claimant(s) : Ms Mairead McKenna BL instructed by:
Barry Healy & Co, Solicitors, "Laurel Lodge", Hillside, Monaghan

Respondent(s) : MacGinley Quinn, Solicitors, Ivy House, Roden Place, Dundalk, Co. Louth

The determination of the Tribunal was as follows:-

The claim under the Organisation of Working Time Act, 1997 was withdrawn.

Respondent's Case:

The witness is employed by the respondent as the Office Manager and wages clerk. The business, having moved to new premises, entailed the retail of giftware, light hardware, a garden centre and a builder providers and plumbing centre located in the yard of the premises. The store was opened from 9.00 a.m. to 5.30 p.m. and the yard was opened from 9.00 a.m. to 5.00 p.m. The claimant was employed in the builders' providers section of the yard with another member of staff (PD) who had commenced employment with the respondent in 1995, which was about six months before the claimant.

The witness explained that the two staff employed in the plumbing department had experience in

the plumbing trade. One employee (SB) had 40 years experience in the trade and the other (CC) having previously worked for a plumbing contractor. With a downturn in business, especially the construction sector, the respondent's financial turnover had declined. Staff numbers had been reduced from 33 in 2007 to 22 in 2011. This was a combination of some staff leaving and some being made redundant. They had not been replaced.

A management meeting took place and all departments of the company were scrutinised. Staff hours were first reduced to 4 days and in January 2009 the claimants, and others were reduced to 3 days per week. In Late February early March another meeting was held and it was decided to make the claimant and another member of staff (S) redundant.

With no prior knowledge the claimant was called to a meeting with the witness and the General Manager (DR) of the respondent company. He was informed that due to the downturn in business he was to be made redundant and was given six weeks notice. He was not offered a representative to be present at the meeting. They did not have his redundancy calculation available on the day but told him they would look into it. He did not remember DR saying the decision had been made and could not be reversed. He had no minutes of any meetings to submit to the Tribunal on the day of the hearing.

When asked he stated there was no other position to offer the claimant. No new staff were hired after the appellant was made redundant.

On cross-examination he stated that there had been no letter to explain why he had been made redundant but had been informed at the meeting with DR. He agreed that other staff in other sections had been hired after the claimant commenced employment. The reason the claimant was made redundant was because the department he was employed in was the biggest loser of revenue. When asked he said that the appellant had not the experience to work in the plumbing department.

When asked he explained that SB and CC were now employed on a 2 ½ day week each. With staff numbers reduced the number of lorries for deliveries had now been reduced from three to one.

One of the Directors and General day-to-day Manager (DR) gave evidence. He had attended the meeting with the previous witness and the appellant on March 10th and was part of the decision making group to make the claimant and S redundant. He stated that at the start of the meeting the claimant had been asked if he wanted to have some one with him.

On cross-examination he stated the claimant had not raised the issue of working in another department of the business or had discussed his mortgage. When asked he said he could not say why the RP50 form had not been completed and handed to the claimant at the meeting on March 10th.

Claimant's Case:

The claimant gave evidence. He commenced employment with the respondent in May 1996 in the original premises and the business later moved to bigger premises. The claimant worked in all aspects / departments of the business including, sales, ordering, loading stock, deliveries, bathroom, tiling, plumbing departments, garden centre amongst other. He mainly worked in the builders providers department in the yard beside the plumbing department.

He explained that he had experience in plumbing as he had worked in that department over time

dealing with plumbers and receiving advice on new products from sales representatives. He believed he had more experience than CC. In November 2008 his hours, and other staff, were reduced to 4 days a week due to the downturn in business. In January 2008 his, and other staff, hours were reduced to 3 days a week. He told the Tribunal that a friend, not a colleague, had mentioned to him that he was in line for a “big lump sum”. When he asked what he meant he said nothing.

On March 10th he was asked to attend a meeting of which he had no prior notice and was not asked if he wanted someone to accompany him. He was informed that he was being made redundant. When he mentioned the mortgage he had to pay DR told the decision was made and could not be reversed. He asked was anyone else involved in the redundancy and was told they could not tell him. He worked out his 6 weeks notice. He gave evidence of loss.

On cross-examination he agreed that SB had 40 years experience in the plumbing trade but CC had none. He explained that he had worked on displays in various departments of the business over the years. He accepted the economy had declined and therefore so had business.

Determination:

Having heard the evidence adduced by both parties in this case the Tribunal find that the claimant had been made redundant and the procedures used in this case were fair.

Accordingly the claims under the Unfair Dismissals Acts, 1977 to 2007 and the Redundancy Payments Acts, 1967 to 2007 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)