

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

-claimant

CASE NO:
UD1913/2009
RP2164/200
MN1807/2009
WT806/2009

against

EMPLOYER

-respondent

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT 1997

I certify that the Tribunal

(Division of Tribunal)

Chairman: Mr. J. O'Connor

Members: Mr. P. Casey
Mr. D. Mc Evoy

heard this appeal on 23rd September 2010 in Tralee

Representation:

Claimant: Mr. Con Casey, SIPTU, Connolly Hall,
Upper Rock Street, Tralee, Co. Kerry

Respondent: Mr. Christopher Ross, Michael Dowling
& Co. Solicitors, Church
Street, Tralee, Co. Kerry

The Determination of the Tribunal was as follows:

The claim under the Unfair Dismissals Acts, 1977 to 2007 and the appeal under the Organisation of Working Time Act 1997 were withdrawn at the outset.

Claimant's Case:

The claimant commenced employment on the 1st of June 2003 as a truck driver with the first transport company. On the 1st of July 2007 under the Transfer of Undertakings Directive the claimant's employment transferred to a second transport company. On the 1st of January 2008 the claimant's employment transferred to the respondent.

Throughout the claimant's employment his job remained the same; a truck driver for a builders supplies providers. Throughout the claimant's employment the customers he delivered for remained the same or were similar and the equipment he used remained the same. The claimant was aware on each occasion that his employment had been transferred. The respondent informed the claimant he had bought the trucks from the previous transport company; that the claimant would be driving for him from now on and that everything would remain the same. The respondent issued the claimant with a six-month contract a week later, which he signed three weeks later.

As well as the claimant two other employees transferred to the respondent one of which was let go one week after the transfer another returned to the employ of the transport company.

The claimant received a phone call in October 2008 from the respondent 3 weeks before he was made redundant informing him that work was quiet and he was being let go.

The claimant disputes getting a phone call on the 29th of December from the respondent asking him to work for him. The claimant disputes informing the respondent that he got a job directly with one of the transport companies customers.

Respondent's Case:

The respondent was approached initially in September 2007 by the transport company owner and asked if he would like to buy some of his trucks. The transport company owner approached him again and offered him 6 trucks for €170,000; the respondent agreed subject to finance. The respondent already owned 2 trucks and of the six he bought, he planned to upgrade his fleet to 4 and sell the remaining 4 trucks. The respondent received confirmation that he had been approved for the finance on the 28th of December; he informed the transport company owner who signed the ownership of the trucks over to the respondent and said he would have them delivered that week.

The respondent only discussed the sale of the trucks; the transport company owner was retaining the business and all the remaining trucks. The respondent was only buying the trucks not the business. The transport company the respondent bought the trucks from, remained in business. There was no legal documentation involved; the respondent just bought the trucks. The respondent never made any inquiries about the transport companies existing contracts. The respondent had his own work lined up for his 4 trucks.

The respondent received work for two companies that the transport company had previously undertaken, as he offered the companies a better rate. The respondent inquired with a transport company driver (LB) if there were any relief drivers available. LB came to work for the respondent as he had been made redundant by the transport company and gave the respondent 5 other names and numbers that had also been let go from the transport company. The claimant was one of the names LB had given the respondent; the respondent rang the claimant on the 29th of December and offered him work, which he accepted. The respondent also had to contact the

claimant as he was in possession of one of the trucks the respondent had purchased. The respondent does not know what sort of agreement the claimant had with the transport company that led him to be in possession of the truck over Christmas.

The respondent organised a meeting for the 15th of January 2008 to give terms and conditions and contracts of employment to the drivers. A number of the drivers enquired about a redundancy payment; the respondent informed them that they had been let go from the transport company and should contact the transport company directly.

The respondent rang the claimant in October 2008 to give him 6 weeks notice that his employment would be coming to an end. During the notice period the claimant informed the respondent that he had found an alternative position with another transport company. During the claimant's notice period there was so little work the respondent stayed at home so the claimant would have some work.

The respondent agrees he was doing similar work to the transport company but this was only because he won the contract by offering a better rate to the customers. The respondent had secured additional work compared to the transport company. The transport company retained some of their contracts and its business continued. The transport company purchased two new trucks to replace the six they sold to the respondent. The respondent did not have to submit a business plan to secure finance to purchase the trucks.

Determination:

The claim under the Unfair Dismissals Acts, 1977 to 2007 and the appeal under the Organisation of Working Time Act 1997 were withdrawn at the outset. Accordingly the claim under the Unfair Dismissals Acts 1977 to 2007 is dismissed. The claim under the Organisation Of Working Time Act 1997 is dismissed.

Preliminary Decision on Transfer of Undertakings: Having heard the extensive evidence adduced the Tribunal unanimously determines that a Transfer of undertaking took place in this case.

The Tribunal also determines that a redundancy situation occurred in this case. Accordingly, the Tribunal determines awards the claimant a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2005, based on the following criteria:

Date of birth	17 th March 1973
Date employment commenced	1 st June 2003
Date employment ceased	21 st November 2008
Gross weekly pay	€643.00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period. A statutory ceiling of €600.00 gross pay per week applies in payments from the Social insurance fund.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 is dismissed as the claimant was given six weeks notice.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

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