

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1067/2010, MN1036/2010

against

EMPLOYER
Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr K. Buckley

Members: Mr D. Hegarty
Mr J. Flavin

heard this claim at Cork on 19th July 2011

Representation:

Claimant : Mr. John Boylan, McNulty Boylan & Partners, Solicitors,
Clarke's Bridge House, Hanover Street, Cork

Respondent : Mr. Tiernan Doherty, IBEC, Knockrea House, Douglas Road, Cork

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn at the outset of this hearing.

The determination of the Tribunal was as follows:

Respondent's Case

The respondent is a hydraulic and general engineering company with five branches throughout the country. The claimant who was a general operative reported to its area manager in Cork. Apart from these two employees another qualified mechanic worked from that branch which up to the late 2000s had a good customer base. In general its clients wanted both the claimant and the qualified person in attendance when working on their sites. By the autumn of 2009 this branch's turnover had decreased significantly compared to earlier years and running costs had to be reviewed. That review resulted in cuts in hours worked and remuneration to the staff. The claimant was placed on a three-day week from January 2010.

The area manager had no recall of explicitly discussing a possible redundancy situation with the claimant during that time. The respondent's managing director gave written notice to the claimant in February 2010 that the position he held in the company is being made redundant. That position was not replaced and there were no vacancies in the other branches. The respondent was financially unable to discharge a statutory redundancy payment to the claimant.

Claimant's Case

The claimant acknowledged he received a statutory lump sum from the Social Insurance Fund as a result of the termination of his employment with the respondent. The respondent did not offer him any alternatives when giving him notice of that termination. He told the Tribunal he could do some work that his qualified colleague could not and at times undertook some tasks alone. On 22 February 2010 the area manager approached him and without discussing the issue informed the claimant that he was being let go.

Determination

Having heard the evidence the Tribunal accepts that the respondent's decision to dismiss the claimant by way of redundancy was not unfair. Accordingly, the claim under the Unfair Dismissal Acts, 1967 to 2007 falls.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

