

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

-claimant

CASE NO.
UD1049/2010
RP1451/2010
MN1019/2010
WT431/2010

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. E. Harrington

Members: Mr. P. Casey
Mr. D. McEvoy

heard this claim at Cork on 6th July 2011

Representation:

Claimant: Mr. Cathal Lombard, Eugene Carey & Co., Solicitors, Courthouse Chambers,
Mallow, Co. Cork

Respondent: In Person

Respondent's Case

The Managing Director of the respondent gave evidence. The respondent is part of the motor industry, which went into overall decline from 2008. The respondent suffered a major drop in turnover overnight and as a result had to make redundancies.

The claimant was employed in the body shop of the respondent. The main source of work for the body shop was from repairing internal cars for re-sale and secondly from customers. As the sale of new cars declined the work generated on repairing internal cars also declined. In 2009 the body shop was put on a 3-day week. There were 2 qualified staff and one apprentice working in the body shop. On occasion the body shop opened for more than 3 days if the work was available. Due to the nature of the work the respondent decided that the body shop needed to be open every day but consequently there would only be enough work for 1 person. The redundancies were planned for the end of the first quarter but a complication accelerated the process.

A number of valuable items had gone missing from the body shop over a period of time.

The respondent decided to change the locks on the body shop on Saturday and inform the staff on Tuesday when they presented for work. As the body shop was on the 3-day week the body shop did not open on Mondays. The claimant arrived to work on Monday to find the locks changed on the body shop. The respondent contacted him directly when he discovered he had come to work on Monday and informed him why the locks had been changed. The claimant said it was a 'lock-out' situation and would be seeking legal advice. The respondent had a meeting with the claimant on Tuesday and informed him that he was being made redundant as he had the least amount of service. The respondent explained the economic circumstances that led the respondent to make the decision.

The claimant had an outstanding debt to the respondent in the amount of €18,000.00. The respondent calculated the claimant's redundancy lump sum entitlement (€3,600.00 app.) and offered to keep that as part payment of the debt and write off the balance of the debt when the claimant signed the RP50. The claimant declined the offer and said he would be seeking legal advice. The respondent did not issue proceedings to recover the debt, as they knew the claimant was not in a financial position to make the re-payment.

Claimant's Case

The claimant worked for the respondent in the body shop. He had 35 years experience in the area and was the most senior member of staff in the body shop. The body shop was put on a three-day week as a result of the downturn in business. The claimant accepts that there was a downturn in the respondent's business and he wasn't the longest serving member of staff.

On Monday the 25th of January the claimant presented for work as normal only to discover the locks had been changed on the body shop. The following morning the claimant met with the respondent and it was explained why the locks had been changed. The claimant had a meeting with the respondent on Wednesday morning where he was informed that he was being made redundant and offered the option to write off his debt to the company if he signed the RP50 form. The claimant declined the offer as he felt that he was being blackmailed. The claimant accepts that he was indebted to the respondent.

Determination

The Tribunal noted that the respondent was willing to forgive a debt as part of a redundancy settlement with the claimant and at no stage of the hearing did the respondent retract from that position. The Tribunal noted that no civil proceedings have been brought concerning any such debt.

Having carefully listened to the evidence adduced by both parties the Tribunal is satisfied that the claimant was dismissed by reason of redundancy and that the selection for redundancy was in accordance with the respondent's policy of last in first out. This was a fair selection and accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

The Tribunal finds that the appeal under the Redundancy Payments Acts, 1967 to 2007 succeeds and awards the claimant a redundancy lump sum under said Acts based on the following criteria:

| | |
|-----------------------|-------------------------------|
| Date of Birth: | 19 th June 1962 |
| Date of Commencement: | 15 th July 2007 |
| Date of Termination: | 26 th January 2010 |
| Gross Pay: | €711.36 |

It should be noted that a statutory weekly ceiling of €600.00 applies to payments from the Social Insurance Fund. This award is made subject to the claimant having been in insurable employment under the Social Welfare Acts during the relevant period.

The Tribunal find that the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 succeeds and awards the claimant €1,422.72 being the equivalent to two weeks statutory minimum notice.

The Tribunal finds that the appeal under the Organisation of Working Time Act 1997 succeeds and awards the appellant €236.17 being the equivalent to 1.6 days annual leave.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)