

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:

CASE NO.

UD775/2010

EMPLOYEE

Against

EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms B. Glynn

Members: Mr P. Pierson  
Ms H. Henry

heard this claim at Carrick-On-Shannon on 14th April 2011

Representation:  
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Claimant(s) :

Mr. Patrick Duffy, Patrick Duffy, Solicitor,  
Carrick-On-Shannon, Co.Leitrim

Respondent(s) :

Cathal L Flynn & Co, Solicitors, St George's Terrace,  
Carrick-On-Shannon, Co Leitrim

The determination of the Tribunal was as follows:

**Claimant's case**

The claimant started working in the respondent's garage on 24<sup>th</sup> August 2006 as a mechanic. In March 2009 he was put on a three-day week. In September 2009 the respondent told the claimant that he would have to let him go. The respondent told him that if things got busy again he would employ him but that he would have to advertise the job. The claimant was told that he was being made redundant, as there was no work. Another employee who was there a year before the claimant was on a six-day week. Just before Christmas the claimant saw an advert for a job in the

paper. He did not know if it was for the respondent's garage but he applied for the job and heard nothing back. He called into the garage to see the respondent but he was not on the premises. The claimant spoke to the respondent's brother, who told him it was the respondent's garage that had placed the advert. Soon after, the claimant heard that a new mechanic had started in the garage.

The claimant rang the respondent, who returned his call and confirmed that he had a new mechanic on a three-day week. He told the claimant that he needed someone with Ford experience. The claimant himself had received a Henry Ford award in Bolton Street. The respondent told the claimant that if anything else came up he would get in touch. That was the last contact the claimant had with the respondent. He received a redundancy payment of just over €3,375 and has applied for numerous jobs. The claimant has not been working since finishing at the garage. He has been on a disability payment since 29<sup>th</sup> April 2010 due to a torn calf muscle and bad knee. The disability payment was reduced from €355 to €330.

In cross-examination, the claimant confirmed that he had been on a three-day week since 15<sup>th</sup> March 2009 but he denied that he had requested it. He accepted that work at the garage had slowed down. The claimant did not have any evidence to show that he had applied for the advertised job through the P.O. box number. He did not know the job was for the respondent's garage.

The claimant confirmed that he had worked with the respondent's father and he had left that employment as he got a better offer elsewhere. Five or six years later the respondent approached him with a job offer.

In reply to questions from the Tribunal, the claimant stated that there had been two mechanics in August 2006 when he started. He was the only one with a recognised apprenticeship. When he was being let go he suggested to the respondent that the other employee be put on a three-day week instead of his six-day week. He was told that the other employee would leave if he was put on a three-day week. The claimant did not know why he was being let go and the other employee kept on, he thought maybe it was because of his age. He confirmed he received his Ford experience with Sweeney and Ford, Dublin in 1969. When asked if he was experienced with current Ford cars, he replied that all cars are the same.

The claimant's wife re-called him making a telephone call to the respondent in mid January 2010. The respondent returned the call and it had lasted about 10 minutes.

### **Respondent's case**

The respondent stated that in March 2009 work was very slow in the garage and the claimant asked him about redundancy or going on a three-day week and claiming social welfare for the other two days. The respondent said he would sort it out after his holidays and the claimant said it would suit him now to go on a three-day week. The claimant was on holidays from 26<sup>th</sup> March until 27<sup>th</sup> April, 2009. The claimant asked again in June or July about redundancy and said he would take it as a family member was ill. He requested redundancy again in September as work was still quiet. The respondent looked into redundancy and the RP50 form was printed on 21<sup>st</sup> September 2009. The claimant was happy with this and received two weeks notice. He said he wanted to go that Friday and was paid his two weeks notice.

The claimant asked the respondent to ring him if things start to pick up. The respondent told the claimant that if things start to pick up he would be advertising the job and the claimant was

welcome to apply. No application was received from the claimant after the advertisement was put in the paper. The respondent employed a new mechanic in February 2010 and a week later the claimant telephoned him. He told the claimant he had said he could apply for the job and the claimant said “ you have not heard the end of this”.

In cross-examination, the respondent confirmed that the claimant had asked for a three-day week as he had said that he would be covered for the other two days. He had not told the claimant that he would ring him if he was advertising for a mechanic in the future. He currently employs two full time mechanics and one part time. The respondent confirmed that he received a telephone call from the claimant who had said “you were to ring me”.

In re-examination, the respondent confirmed that he did not replace the claimant while he was on the three-day week, as he had no need to do so. The other employee went from a six to a five-day week

Giving evidence, the employee who ran the office stated that she was present during the conversation about redundancy and a three-day week. She heard the claimant request the three-day week. When the claimant returned from holidays he said that a family member was ill and asked about redundancy. He was with her when she printed the RP50 and they worked out his redundancy. He said he could not work his notice so he was paid his notice and holidays. The respondent then told the claimant that if things picked up he would advertise the job and the claimant was welcome to apply.

The respondent’s brother gave evidence stating that the claimant had come into the garage looking for pallets. The claimant asked him how things were but did not mention the job. This was sometime after January 2010.

### **Determination**

The Tribunal has carefully considered the evidence presented at the hearing of the matter, and is satisfied that a genuine redundancy situation existed. The appellant’s employment with the respondent was reduced to a three day week in March 2009 due to a down-turn in the respondents business. In September 2009 the respondent made the appellant redundant, and it is clear from the evidence adduced at the hearing that the claimant actively sought this redundancy for some time prior to actually being made redundant, as it suited his domestic situation at the time.

Accordingly the claimant’s claim for Unfair Dismissal due to unfair selection must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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