

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM OF:**

**CASE NO.**

EMPLOYEE  
- claimant

UD591/10  
RP794/10  
MN529/10  
WT246/10

**Against**

EMPLOYER - respondent

**under**

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
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 C. Corcoran B.L.

Members: Mr C. Mchugh  
Mr N. Dowling

heard this claim at Dublin on 21st June 2011 and 16th September 2011.

**Representation:**

Claimant: Mr Sean Allen, Farrell, Solicitors, 28 North Great Georges  
Street, Dublin 2

Respondent:  
Mr. Pat Brady, HR Consultant, 56 St. Columbanus Avenue, Milltown,  
Dublin 14 on 16<sup>th</sup> September 2011.

The determination of the Tribunal was as follows:-

At the outset of the hearing the claims under the Unfair Dismissals Acts, 1977 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 were withdrawn.

### **Opening statement by respondent:**

PS is company director. The claimant was employed as a driver and worked for the respondent for 3 ½ years. He was flexible in the early years. He did school runs and worked a 5-day week from 8 am to 4 pm. His weekly wage in 2008 was €500 then increased to €600 per week and increased from €12.50 to €15.00 per hour. It reduced again for a period.

In the last six to eight months there were issues. There were unapproved absences/refusals to do certain jobs. The company needed flexibility. The claimant was finishing at 3.45 pm each day.

The claimant let the company down at the last minute at times. His job was not redundant.

### **Respondent's Case:**

The respondent's business is in bus business/school transport. There is 14 weeks closure in schools per year. The owner PS employed the claimant. He was a model employee and worked well for the first two and half years. The claimant then became choosy on his working time and said he would not be working Saturdays. The claimant's girlfriend told PS that he could not talk to the claimant when he was off duty and that the claimant was not working after 5 pm or at weekends.

The claimant knew that he could take time off /holidays during the schools fourteen weeks closure. It was not possible for the respondent to allow the claimant to have holidays when the schools were open.

The claimant did a school bus run for one hour between 8.30 am and 9.30 am and one hour between 2.30 pm and 3.30 pm in the Tallaght area. In between those hours he might come into the yard and he could be sent on other runs such as a swim run. The claimant actually worked between 20 and 25 hours per week. He was reluctant to do country work.

In autumn 2009 the company ran into serious financial problems. They had to ask drivers to take a wage cut. They asked drivers to go on short time/part time and to come back when work was available.

The claimant was paid for working 37.5 hours. When on short time he was paid for 20 hours a week at €15.00 per hour. He was required to work five days per week to do the school runs. He had requested a contract of employment. PS had asked his daughter, PAS, to draw up a contract of employment some months earlier. She used a standard contract of employment, one used by reputable solicitors.

After 13 weeks on short time the claimant served an RP9 on the company on 28<sup>th</sup> January 2010. The next day 29<sup>th</sup> January 2010 the claimant was provided with a new contract of employment. His rate of pay was cited as €13.50 per hour. The respondent was hoping the claimant would accept the reduced rate because of the financial state of the company. The claimant was unhappy with that contract. A second contract was drawn up with a rate of €15.00 per hour and the respondent met the claimant on 2<sup>nd</sup> February 2010 with this new contract. He was asked to read it over and think about it. Again the claimant did not accept this contract. PAS contended that they were trying to follow the law and did not want to lose the claimant and had to offer him full time employment. The claimant had dictated his own hours of work.

If the claimant left his employment at that time the respondent would have had to retrain someone

else on the job so a full time contract was at that time offered to the claimant. They wanted to keep him. He was never sacked nor made redundant.

There was no redundancy situation. The respondent wanted him to stay. School work is still available for the claimant, i.e 1 hour in the morning and 1 hour in the evening.

### **Claimant's Case:**

The claimant commenced employment on 12<sup>th</sup> June 2006 as a bus driver. His job also entailed cleaning buses. There were six to seven buses in the garage. He did a school run from 8.30 am to 9.30 am approximately and returned to the garage and cleaned buses until 1.00 pm approximately. If he was required to do other bus runs he duly did them during those hours. He did a second school run in the afternoons and picked children up at 2.30 pm until 3.30 pm. When the schools were closed during holidays there was always plenty of other work. His hours of work were 8 am to 4 pm. In the first two years of employment he did not receive wage slips. He had continuously asked for them and was told they were not given out. He received them from mid 2008. He never received a contract of employment before the one offered to him on 29<sup>th</sup> January 2010.

The son of the respondent, C, asked him in September 2009 to do an overnight trip to Clare in October 2009. He agreed to do it. Two other drivers were also involved in the trip. He arranged a day off on Tuesday, 29<sup>th</sup> September 2009 to get fitted for a suit and this was agreed. It transpired that C had made a mistake about the date and the trip was in fact scheduled to take place the same day that the claimant had requested a day off. He was told he would just have to do the job. The claimant said he could not go.

The Sunday before the planned trip PS told him to cancel his arrangements for 29<sup>th</sup> September 2009. The claimant reluctantly did the trip. He arranged a day off the following day.

The claimant was given little notice of when he was to take holidays. While on his Easter week's holidays in 2009 he was asked to come into work on both the Wednesday and Thursday of that week.

He never received P60s in 2006, 2007 or 2008. He received his first P60 in 2009.

The claimant believed that the respondent was trying to push him out of the company and put him on part time hours. He accepted this and was told he would work reduced hours until business picked up again.

He was asking too many questions. At the end of his employment the claimant contended the respondent treated him poorly. He had never been absent from work during his tenure.

When he was put on part time hours work was still available but was not given to him. He felt isolated and served the RP9 on the respondent on 28<sup>th</sup> January after thirteen weeks on short time. He needed full time work and needed to know where he stood.

When he met PS and PAS at a meeting on 29<sup>th</sup> January 2010 they presented him with a contract of employment to sign. PAS was only interested in discussing the disciplinary procedures outlined in that contract. He was told to take it away and read it.

He sought advice and was told not to sign the contract of employment. He acted on this advice.

When he was put on part time hours work was still available but was not given to him. He felt isolated and served the RP9 on the respondent after thirteen weeks.

**Determination:**

The respondent carefully considered the evidence adduced during this two-day hearing. On the balance of probability the Tribunal finds that the claimant was made redundant and awards him a redundancy payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria:

Date of Birth:	14 <sup>th</sup> April 1978
Date of Commencement:	12 <sup>th</sup> June 2006
Date of Termination:	7 <sup>th</sup> February 2010
Gross Weekly Wage:	€600.00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

Insufficient evidence was adduced to substantiate the claimant's claim in respect of holidays. The Tribunal dismisses his claim under the Organisation of Working Time Act 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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