

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:
EMPLOYEE

CASE NO.
RP854/2010
MN573/2010

-appellant

against
EMPLOYER *-respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr. N. Ormond
Mr. J. Dorney

heard this appeal at Wicklow on 29th March 2011

Representation:

Appellant: In person

Respondent: Augustus Cullen Law, Solicitors,
7 Wentworth Place, Wicklow

Background:

Dismissal is in dispute in this case; accordingly the Tribunal heard the claimant's evidence first.

Claimant's case:

The claimant commenced with the Respondent in August 2004 as a van driver. He was promoted to drive a "plasma" van sometime in 2005. Sometime in 2008 the employer transferred the warehouse manager to a driving position and promoted the claimant to warehouse manager.

Sometime in or around June 2009 the employer told the employees that they had lost a large contract with company P. They had run reverse logistics for company P in that they took back their damaged stock for them. They also did private house collections for company P in that they transported stock that was under warranty for repairs.

In June 2009 the claimant returned from holidays and the owner told him that he had purchased a franchise from company D. the claimant was sent on a training course for company D which company D held in Athlone. This was in relation to "hand held" dispatching equipment. He then went to Kiltimagh to see how the "live warehouse delivery" system worked. he returned to the Respondent and organised the van drivers and the new system, He "got them up and running".

In October 2009 a driver was dismissed or left so the claimant took it upon himself to drive a van and do deliveries. The owner agreed that he do this until October 16th.

On Friday 25th October the claimant was told over the telephone that his job no longer existed. The claimant explained to the Tribunal that his contracted hours were 6.30 am to 4.00 pm and he had been doing these hours for 6 years. He also finished at 2.00 pm on Fridays. The employer then told him that the van driver work hours were changed to a 6.00 pm finish. The claimant told the employer that he would agree to work until 4.00 pm on Fridays and every second Saturday for a few hours at no expense to the company and he did this for four weeks.

The owner told him that the job no longer existed and the owner did the work himself. He asked the owner about redundancy and the owner told him that he was not being made redundant as he had a job as a van driver. The owner told him that he could leave if he wanted to or he could drive a van. He had agreed to take the same cut in pay as the drivers.

He declined the offer of the owner and asked the owner about redundancy and he was told that he was not being made redundant that he had a job as a van driver.

In cross-examination the claimant was asked why he thought that there was a redundancy situation and he replied that he was employed as a warehouse manager.

Respondent's case:

The Tribunal heard evidence from the owner of the Respondent Company. He started the company Seventeen years ago and is a sole trader. Fourteen years ago he commenced the contract with company P. In 2005 he got a warehouse and the claimant commenced working for him initially as a driver. The claimant did collections and deliveries. The witness explained when asked that the position of plasma driver was not a promotion "to make the people (employees) feel better we would give them a van that solely delivered plasma screens, it wasn't a promotion".

The claimant then worked in the warehouse organising the warehouse and getting the vans on the road. As the claimant was indoors his subsistence ceased as he was not on the road.

During latter years the business eroded. There was not enough money and the "work fell apart". It went from being profitable up to May 2009 to losing €9 k per month. He kept all the workers on at the time but it was a mistake and he felt that he should have just folded up the business. The transport business was badly hit in the recession.

He called to another transport business to see if he could sub contract business. The owner of the transport business needed to free up money so it turned out that he could purchase the Wicklow franchise of the other business. He needed a loan to purchase the business and he obtained a loan. He purchased the franchise.

As they had drivers in Donegal and another location in Ireland they had to be made redundant as the new base was to be in Wicklow. He explained to the drivers that were to be kept that instead of them doing six jobs over hundreds of miles they would be doing sixty calls over a thirty mile area. His accountant said based on department of finance rules he would not be paying them subsistence. The claimant was never on subsistence.

He did explain to the claimant that his hours would change. The claimant himself came up with the idea of 6.30 am to 4.00 pm Monday to Friday and three hours on Saturday. This new work commenced in September 2009. From the time the first parcels arrived he felt that the claimant was “not on board”. The claimant’s job was not redundant. He was not making the claimant redundant nor cutting his pay. Eventually he asked the claimant if he was “looking to get out”. The claimant told him yes. The claimant had arrived into work on one day and began issuing orders to the other drivers. He had been due to arrive into work for 7.30 am but arrived in at 6.30 am. He asked the claimant what was happening. The claimant refused to drive. On the last day the claimant worked on 28th October claimant threw keys and mobile phone at him. He thought the claimant would return. He needed people to drive. He was hoping that the claimant would come to his senses and come back.

Determination:

The Tribunal having heard the evidence adduced determines that no redundancy situation existed. The Appellant resigned his position. Accordingly, the claim under the Redundancy Payments Acts, 1967 to 2007, fails.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

