

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

-claimant

CASE NO.
UD1002/2010
MN980/2010
WT418/2010

Against

EMPLOYER

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 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. T. Ryan

Members: Ms J. Winters
Mr J. Flannery

heard this claim at Trim on 29th November 2011

Representation:

Claimant: Ms Tracy Ennis Faherty B.L. instructed by,
James McSweeney, Solicitors, 515 Main Street, Tallaght Village, Dublin 24

Respondent: Mr Christopher Horrigan, Blake Horrigan, Solicitors, McKeever House,
4/5 Ushers Court, Ushers Quay, Dublin 8

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn at the outset. The claim under the Organisation of Working Time Act 1997 should be with the Rights Commissioner Service as the Tribunal does not have Jurisdiction.

Background

The claimant is making a claim for unfair selection for redundancy. The respondent contends it was a fair selection for redundancy and a genuine redundancy situation existed.

Respondent's Case

The General Manager (BmcC) gave evidence. The respondent is a Waste Management company. Its main business was focussed on the construction industry (Commercial Division). Due to the economic downturn the company had to re-focus its business into the household

sector i.e. wheelie bin collection. The respondent has 370 members of staff. As part of the rationalisation of the company following the economic downturn a 10% and then a further 5% pay reduction was taken by all staff. The decision was taken to wind down the Commercial Division of the respondent.

The respondent has 4 premises; Slane, Co. Meath, Ballycoolin and 2 in Ballymount, Dublin. In 2007 there were 70 staff employed in wheelie bin collection in Dublin, there are now 150 staff. The Dublin collection staff are all multi-skilled. The claimant was a delivery/collection driver based out of the Slane site. The bulk of the claimant's work was carried out in Dublin and the surrounding areas.

The selection criteria employed in making the claimant redundant were; location, skills, work available. The claimant was selected as he was based in Slane and he drove a smaller truck than the large domestic waste collection trucks now mainly used in Dublin. The claimant was based out of the Slane site and as all the work was now in Dublin his position was made redundant. After the decision was made the claimant was called to a meeting and informed of this decision. The claimant was not offered or considered for any alternatives or asked to commute to Dublin. The respondent did not think to offer the role of 'helper' as the pay was significantly lower than the claimant's driver salary. There was no prior consultation with the claimant. As the claimant was the sole employee of the Commercial Division in Slane, no one else was considered for redundancy.

Claimant's Case

The claimant was not consulted regarding the possibility of redundancy. He was called to a meeting with no prior notice or offer of representation and informed he was being made redundant. The respondent did not offer him any alternatives to being made redundant. The claimant would have been flexible with his working hours and location in order to retain his employment. The claimant would have accepted a position of truck driver or helper. The claimant held the correct licence to drive the large domestic waste collection trucks.

The claimant gave evidence of Loss and his attempts to mitigate his Loss.

Determination

The Tribunal, having carefully considered all of the evidence adduced find that the claimant was unfairly dismissed as defined in Section 6(3)(a) of the Act which states,

“if an employee was dismissed due to redundancy but the circumstances constituting the redundancy applied equally to one or more other employees in similar employment with the same employer who have not been dismissed and either

(a) the selection of that employee for dismissal resulted wholly or mainly from one or more of the matters specified in subsection (2) of this section or another matter that would not be a ground justifying dismissal, or

The claimant was not offered or considered for any alternative position which he was both qualified and available for. The claimant was selected for redundancy as the bulk of the available work had moved to Dublin and he was based in Slane, yet the claimant regularly

carried out his work for the respondent in Dublin. The respondent failed to follow any prescribed procedure in effecting the claimant's redundancy. The claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the Tribunal award the claimant €30,000.00 as compensation.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)