

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

*claimant*

UD2043/2010

WT906/2010

Against

EMPLOYER  
under

*respondent*

### ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr. J. O'Neill  
Mr J. Maher

heard this claim at Dublin on 5th March 2012

Representation:  
\_\_\_\_\_

Claimant(s): The claimant in person

Respondent(s): The financial controller of the respondent

The determination of the Tribunal was as follows:-

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

The claimant told the Tribunal that he commenced employment with the respondent in 1985. He was employed as a driver/store man. His employment was uneventful until September 2008 when the MD told him that he and the other driver were to be let go as work was slowing down and in fact he was not let go. Mr. C indicated that they would try and weed out both drivers due to the downturn in business. His earnings as a full time employee were €740.00 per week. He always received a bonus in June and December. He was told at the end of December 2008 that the bonus was to be discontinued. He had a good working relationship with his colleagues and there was no line of demarcation between management and employees. From March 2009 to August 2010 he was on a three day week and he earned €370.66 per week. He was paid more than the other driver.

He contacted the pension ombudsman in relation to his pension and he received a decision on the 12<sup>th</sup> October 2009. On the 15<sup>th</sup> October 2009 he was in work and K in accounts told him he was causing trouble and turmoil, the claimant was dumbfounded.

He knew that the respondent was trying to get rid of him. He was reprimanded by the MD and he was informed he was shouting at other members of staff. He had a problem with his hearing. The claimant always did what was requested of him by the MD. In December 2009 he was asked to work two days which he did as the other van driver was on leave for two days. He never took more than two weeks holidays. When he was made redundant he told his employer he was due holidays but the respondent told him he had received all his holiday pay due. He worked an extra week for the other van driver.

He was give notice of his redundancy on the 31<sup>st</sup> August 2010 and there was still work in the warehouse. He had three years to go to retirement. When there was no work to do he undertook stocktaking duties. He felt that employees should have been let go before him.

### **Respondent's Case**

DW the financial controller told the Tribunal that the claimant was employed as a driver/store man for the past twenty years. He could use the company van to travel to and from work; he had a company credit card and a fuel card to buy fuel for the van.

The respondent was sold in 2007 and the former owner awarded employee monies that were paid into their pension fund. The claimant had €110,000 paid into his fund, the employer paid 10% of the claimant's pension and normal company policy was 5% and the claimant was obliged to contribute 3%.

The respondent employed two full time delivery drivers to deliver goods to building sites and premises in and around Dublin. The respondent also used external couriers. Due to the difficult trading situation in the respondent the working hours of both drivers were changed from a forty hour week to a twenty hour week. The claimant and the other driver worked a week on week off. The levels of business did not warrant a return to full time working for both drivers.

In July 2010 the respondent ceased in house deliveries as business continued to fall. The respondent decided to use next day delivery services for its deliveries. In 2010 the respondent spent €19,000 on external couriers as well as employing the two drivers. In 2011 the business continued to decrease. The approximate cost of having two vans and two part drivers was approximately €77,000.00.

During the past three years a number of positions were made redundant. Another company L and H subsumed the respondent and three sales staff, the financial controller and an assistant accountant were transferred to this company.

The claimant was paid his statutory redundancy based on €370.60 per week plus an ex gratia payment of €11,719.27. The ex-gratia was made on the statutory ceiling of €600.00 per week. The holiday records were kept by an employee who was made redundant and the respondent were unable to obtain copies other than e mail records of days taken.

### **Determination**

The Tribunal is satisfied that the claimant was not unfairly selected for redundancy. The jobs of

the drivers were made redundant to be replaced by overnight courier services. The claimant and a colleague were both made redundant in and around August/September 2010. The Tribunal finds that there is no obvious rationale for considering an employee whose function is driving and delivering for a warehouse position displacing a warehouse employee in the process. This is a clear case of the job and not the person being made redundant. The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

The Tribunal awards the claimant compensation in lieu of holidays in the amount of €370.66 under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

