

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE

CASE NO.  
UD1719.10  
MN1669.10

against

EMPLOYER  
under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. D. Donovan BL

Members: Mr. J. Goulding  
Mr. J. Jordan

heard this case in Dublin on 10 January 2012

Representation:

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Claimant(s):

Mr. Fran Rooney BL instructed by  
Sinnott & Company, Solicitors,  
Belgrave House, 15 Belgrave  
Road, Rathmines, Dublin 6

Respondent(s):

No legal representation

The determination of the Tribunal was as follows:-

It was alleged that the claimant, an automobile sales manager, had been unfairly dismissed after an employment which commenced in April 1990 and terminated in April 2010.

It was alleged that the claimant had, in the course of his employment, been subjected to intimidating behaviour by the general manager (CS) and that the respondent had allegedly sought to intimidate the claimant into accepting redundancy without following proper procedures as set down by law.

The claimant attended a meeting at end March 2010 when he was informed by his manager and

the respondent's managing director about the possibility of the claimant's position being made redundant and that either the claimant's position or that of another employee would be made redundant due to downturn in business. The claimant replied that his department was not losing money but CS told the claimant that, two days later, the claimant was to tell CS why the claimant should be retained in employment rather than the other employee.

On Tuesday 6 April 2010 the claimant received an e-mail from CS stating that, as the respondent had not heard from the claimant, they would take it that he had nothing further to say. The claimant met with his employers and was informed that his employers had met the other employee on Good Friday which surprised the claimant as the premises was closed and the meeting did not take place within the premises. The claimant reminded his employers that his role was that of an after-sales manager which had previously been acknowledged and understood. At that point, CS allegedly engaged in intimidating behaviour towards the claimant informing him that his (the claimant's) position was redundant.

The claimant worked as a Service Receptionist for many years and could have taken the position the position as Service Receptionist (albeit a demotion) rather being made redundant. That position was filled by another employee. It was alleged that no proper criteria for redundancy were furnished to the claimant.

It was submitted on behalf of the respondent that redundancy discussions were held with the claimant (after-sales manager) and DB (parts technician) on 30 March 2010 and that, shortly after, an e-mail was sent to the claimant clarifying that the respondent wanted to meet before the end of Thursday 1 April 2010 if the claimant wanted to make representations regarding the after-sales manager's role. It was further submitted that DB had approached C outside the showroom at 5:30pm on 1 April 2010 to make representations regarding the parts technician role and CS had e-mailed the claimant at 11.39 on 6 April 2010 requesting feedback before the end of the day. The claimant discussed the after-sales manager's role with AK (the respondent's principal) and CS on 6 April 2010. The directors and general manager met on 7 April 2010 to decide the redundancy. Individual meetings were held with the claimant and DB on 7 April 2010 to convey the result of the management meeting earlier that morning.

The claimant was informed of his role being made redundant. A follow-up letter (dated 7 April 2010) from CS was presented to the claimant regarding the reasons for redundancy i.e. financial difficulties relating to the serious downturn in business over the preceding two years.

At the Tribunal hearing it was contended that there had been a sham redundancy, that there had been an absence of consultation or formal procedure and that the claimant had then been unfairly selected for redundancy.

**Determination:**

Having considered the evidence adduced at the hearing the Tribunal finds that due to a downturn in its business the respondent had a need to make some employees redundant. The Tribunal accepts that the respondent acted in good faith but nonetheless finds in the circumstances the respondent was not justified in retaining an employee with considerably less service than the claimant. Accordingly, the claim under the *Unfair Dismissals Acts, 1977 to 2007*, succeeds. The Tribunal awards the claimant compensation in the amount of €15,000.00 (i.e. 18.298 weeks' gross pay at €819.76 per week) in addition to the amount of €24,816.00 already paid to the claimant.

Therefore, in addition to any payment already made to the claimant in respect of the ending of his employment with the respondent company, the Tribunal, allowing the claim under the *Unfair Dismissals Acts, 1977 to 2007*, awards him compensation of €15,000.00 (this amount being equivalent to 18.298 weeks' gross pay at €819.76 per week) under the *Unfair Dismissals Acts, 1977 to 2007*.

It should be noted that payments from state funds in the event of a liquidation or receivership are subject to a statutory ceiling of €600.00 per week.

The claim lodged under the *Minimum Notice and Terms of Employment Acts*, falls because the Tribunal did not find the respondent to have breached the said legislation.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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







































































































































































































































































































































































































































































































































































































































































































































































































































Kenneth Cummins, 10 Dunmore Grove, Ballymount, Dublin

