

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD1025/2010

MN1000/2010

against
EMPLOYER

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. Gilvarry
Members: Mr. D. Morrison
Mr M. McGarry

heard this claim at Castlebar on 17th October 2011 and 31st January 2012

Representation:

Claimant: The claimant in person

Respondent: Mr. John Barry, Management Support Services (Ireland) Limited,
The Courtyard, Hill Street, Dublin 1

Respondent's case

The respondent is an engineering company engaged in the manufacturing of machine parts and components. The claimant was employed as a spray painter from 6th March 2001 to 8th February 2010.

There was a severe downturn in business from July 2009 to February 2010 and the respondent had to rationalise the business and reduced the staff by one third. However in March 2010 there was an improvement and some staff were taken on and one of these was assigned to the job that the claimant previously did. This remained steady until September 2010 when more staff were taken on and by 2011 the numbers employed were back to the 2009 level.

The criteria used in selecting the claimant for redundancy was that he was not flexible with regard to working arrangements. Evidence was given that the claimant had refused to work over-time on a number of occasions and could be awkward and reluctant about doing work that he deemed not to be proper to a spray painter. The claimant had been issued with a warning in respect of not working over-time and was told to "buck up his ideas".

Claimant's case

The claimant stated that he had been victimised by his supervisor in an effort to get rid. When he was issued with a warning in relation to not working over-time, the claimant made a complaint in relation to this victimisation. However, no action was taken in respect of his complaint and instead, the manager simply avoided him and he was left alone.

The claimant argued that he had greater skills and was more senior than a number of other employees who were kept on after he was made redundant and therefore he was unfairly selected for redundancy.

Since becoming unemployed the claimant has applied for two jobs in tyre retail outlets in his locality and completed a six month training course with Fás. At the date of the hearing he had not secured any alternative employment.

Determination

Dismissal was not in dispute and the respondent's case was that it was by reason of redundancy and that the selection of the claimant was fair and objective.

Having considered the evidence adduced the Tribunal is not convinced that a genuine redundancy situation existed in relation to the claimant's duties and finds that he was unfairly dismissed.

Taking all the circumstances into account the Tribunal finds that compensation is the appropriate remedy. The Tribunal noted the periods that the claimant was unavailable for work and his efforts to mitigate his loss. The Tribunal further noted the claimant's record with the company and the company's efforts to encourage him in his duties.

The Tribunal awards the claimant €3,000.00 under the Unfair Dismissals Acts, 1967 to 2007. This amount is apart from the amount already paid to him in respect of a redundancy lump sum.

Furthermore the Tribunal is finds that the claimant was only paid two weeks notice and ought to have been paid four weeks. Accordingly, the Tribunal awards the claimant €1,484.06 under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

