

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD862/2010
MN820/2010

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: Ms. E. Daly B.L.
Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this claim at Letterkenny on 23rd November 2011 and 11th January 2012

Representation:

Claimant:

Mr Robert Sweeney, Robert Sweeney, Solicitors,
No 2 Crerand House, Larkin's Lane, Letterkenny, Co Donegal

Respondent:

Mr Terry MacNamara, IBEC, 3rd Floor, Pier 1, Quay Street,
Donegal Town, Co Donegal

Respondent's case

The respondent is an engineering company engaged in the production of machine components. It was decided to restructure the business and part of this process involved the rearranging of shifts within the plant. The claimant had been on a shift pattern of 12:00 to 20:00 but this shift was to become obsolete and the new shifts were to be 06:00 to 14:00 and 14:00 to 22:00 with an interim shift of 08:00 to 16:30.

The claimant had often expressed an interest in changing his shift to a day time shift and the witness for the respondent thought that he would be pleased with the offer of the 08:00 to 16:30 shift. This would have involved changing to a different section within the plant. However, it would also have meant the claimant would be paid more as he would then be working 40 hours per week.

The respondent drafted a new contract of employment outlining the changes above and asked

the claimant to sign this. The new contract did not alter the claimant's hourly rate of pay, nor did it change his job description. However the claimant would not sign the new contract, nor would he agree to the restructuring and therefore the respondent was left with no choice but to make him redundant.

It was common case that the claimant received two weeks notice.

Claimant's case

The claimant was working in the painting section of the plant and the offer of an alternative shift pattern would have meant working in a different section of the plant. He felt that the work in the painting section was a more skilful job than the alternative being offered to him and was of the opinion that this would effectively be a demotion for him.

On this basis the claimant argued that he was unfairly selected for redundancy and was not offered a suitable alternative.

Determination

Having carefully considered the evidence adduced the Tribunal is satisfied that the claimant's position became redundant as a result of reorganisation within the respondent company. The Tribunal is also satisfied that the respondent offered the claimant suitable alternative employment and that the claimant refused this offer, leaving the respondent with no alternative but to terminate the claimant's employment due to redundancy.

Therefore the Tribunal finds that the claimant was not unfairly dismissed and his claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

It was common case that the claimant was paid his full statutory entitlement under the Minimum Notice And Terms Of Employment Acts, 1973 to 2005 and therefore the appeal under these acts fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)