

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE
MN415/11

CASE NO.

RP544/2011
- claimant UD423/11

WT140/11

Against

EMPLOYER

- respondent

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr N. Russell

Members: Mr M. Noone
Mr F. Dorgan

heard this claim at Carlow on 6th June 2012.

Representation:

Claimant: Mr. Colm Hennessy BL, instructed by O'Gorman Begley, Solicitors, "Kincora",
Athy Road, Carlow

Respondent: Ms Muireann McEnery, Peninsula Business Services (Ireland) Limited, Unit 3,
Ground Floor, Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:-

At the outset of the hearing the claims under the Unfair Dismissals Acts, 1977 to 2007 and the
Organisation of Working Time Act, 1997 were withdrawn.

Claimant's Case:

The respondent company is engaged in the taxi business and the claimant commenced employment on 28th April 2000. He was employed as a taxi driver. He worked a forty hour week on the day shift. He used a company vehicle while working for the respondent.

During his tenure he did about three dialysis runs to hospitals per week. He was paid €30 extra for each run.

In January 2010 he spoke with DA, owner and Director in the yard. During the course of that conversation DA said "you are finished". The claimant's understanding at that time was that there was no more work available for him. The claimant then enquired about redundancy and DA responded "we'll work something out". The claimant could not recall exactly as to what date his employment was being terminated. He went on holidays in early February 2010 and following his return he worked for the respondent for several more weeks. DA gave him his P45. The claimant's understanding was that he would receive his redundancy entitlement. He spoke with DA on several occasions thereafter seeking his redundancy entitlement.

The claimant loved his job and was treated very well during his tenure. He contended that DA was a good employer. He also contended that he did not leave his job voluntarily as he had a family to support and also had a mortgage on his house.

The claimant secured alternative work approximately two months after the termination of his employment.

Respondent's Case:

DA commenced the taxi business in 1993. At the commencement of the claimant's employment in 2000 he employed eight full time and four time staff.

In or around mid 2009 the claimant moved to Kildare which was about a fifty minutes commute for him to work each day. He drove his own vehicle to work and then used the company vehicle while working.

At the beginning of January 2010 the claimant asked DA if he could guarantee him overtime. DA could not. The claimant then said if he were to leave could DA give him his redundancy. Work was available for the claimant, and DA did not want to let him go. This was the only conversation he had with the claimant in relation to redundancy.

The claimant has been replaced in his role. His replacement works forty hours per week.

Determination:

The Tribunal was faced with a complete conflict of evidence in this matter as to whether the claimant's employment was terminated or he left of his own volition.

The question for the Tribunal is whether the respondent in this instance dealt with the presumption of redundancy.

Considering all factors and the evidence of the parties, the Tribunal has concluded that a redundancy situation did not exist in the respondent company when the claimant's employment ended and that, accordingly, there was no dismissal by way of redundancy. The respondent successfully rebutted the presumption of redundancy.

Pivotal for the Tribunal in arriving at this determination was the uncontested evidence of the respondent who informed the Tribunal that immediate cover had to be arranged on a forty hour per week basis when the claimant departed.

Accordingly, the claim under the Redundancy Payments Acts, 1967 to 2007 fails. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____
(CHAIRMAN)