

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE *-claimant*

CASE NO.  
UD388/2010

against  
EMPLOYER *-respondent*

RP596/2010

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr N. Russell  
Members: Mr J. Hennessy  
Mr F. Dorgan

heard this claim at Clonmel on 5th July 2011

#### Representation:

Claimant: Mr. Philip A. English, English Leahy, Solicitors,  
8 St. Michael Street, Tipperary Town

Respondent: Mr. Brian Moloney, Moloney & Associates,  
Solicitors, 6 O'Curry Street, Limerick

#### **Background:**

The claimant was paid a lump sum, accordingly, the claim under the Redundancy Payments Acts 1967 to 2007 is dismissed.

#### **Respondent's case:**

The Tribunal heard evidence from the owner of the respondent company. He told the Tribunal that the claimant was made redundant on 24<sup>th</sup> September 2009. He had four other employees and chose the claimant to be made redundant. The factors he considered was the service and experience of employees and other factors. He told the claimant the factors he used. The other employees had training in forestry and the claimant had not. The other employees had Coilte courses and the claimant had not. His business in 2009 was 30% forestry and 70% dangerous trees. Other employees had less service than the claimant but there were other aspects to their work.

#### **Cross-examination:**

In answer to questions the witness explained that the claimant's pay was €450.00 gross pay and cash payment was not involved. It was put to the witness that the claimant would say he was paid €535.00 per week and the witness denied this.

#### **Claimant's case:**

The Tribunal heard evidence from the claimant. He gave evidence that he was paid by two cheques totalling €410.00 and a cash payment of €100.00. He had no contract of employment. He had no terms and conditions in writing. He did not get payslips or a form P60. The claimant told the Tribunal that he had an argument with the owner. The owner told him to get out of the premises. He was never "let go" (made redundant). He signed a form for

redundancy because he was under pressure; he had no money and had no work.

Cross-examination:

In answer to questions the witness explained that he was paid “€100.00 under the table”.

**Determination:**

The Tribunal was faced with a complete conflict of evidence in this case with the claimant alleging that he was unfairly dismissed and the respondent employer claiming that there was a valid redundancy situation.

The parties could not agree as to the level of the claimant’s salary at the date of termination of his employment. The respondent stated in evidence that the claimant earned “about €450.00”. A copy of form RP50 produced to the Tribunal and completed on behalf of the respondent recited a figure of €350.00. The claimant gave evidence that he received a weekly cheque for €410.00 and an additional cheque drawn to cash and a separate cash payment totalling between €105.00 and €125.00 and that all of the respondent’s employees were paid in a similar fashion.

The attention of the parties was drawn to the provisions of Section 7 of the Unfair Dismissals (Amendment) Act 1993 and the obligation of the Tribunal to report this evidence both to the Revenue Commissioners and The Department of Social and Family Affairs.

The evidence of the respondent employer was to the effect that the claimant was made redundant after a process which involved group meeting with employees and a one to one meeting with each. The managing director of the respondent company gave evidence as to the criteria used by him and advised the Tribunal that on making the claimant redundant he discussed the criteria he had applied with him.

In his evidence the claimant denied that there had been any such meeting or talk of redundancy and advised the Tribunal that he had been sacked after a verbal altercation with the managing director of the respondent company pertaining to the perception by Third Parties to the role of the claimant on the respondent company.

It was not possible for the Tribunal to reconcile the fundamental conflict of evidence between the parties nor, indeed, to attribute greater veracity to one version than to the other.

In the circumstance the Tribunal looked to the provision of Section 6 of the Unfair Dismissals Acts, 1977 and to the onus on the respondent employer of establishing a dismissal to be fair. The Tribunal is of the view that the respondent employer did not meet the onus on this occasion.

Accordingly, the Tribunal’s Determination is that the claimant was unfairly dismissed and is awarded a sum of €5,000.00, in addition to the payment already received by him from the respondent company, a copy of this Determination to be sent to both the Revenue Commissioners and The Department of Social and Family Affairs.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)

