

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF;

CASE NO.

EMPLOYEE – *claimant*

UD1800/2010  
MN1756/2010  
WT801/2010

against

EMPLOYER – *respondent*

Under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr T. Ryan  
Members: Ms J. Winters  
Mr J. Moore

heard this claim at Drogheda on 10<sup>th</sup> April and 3<sup>rd</sup> July 2012

Representation:

Claimant: Mr Stephen McLoughlin BL instructed by MacGuill & Co. Solicitors,  
5 Seatown, Dundalk, Co. Louth

Respondent: Ms Ailonora McMahon instructed by B. Vincent Hoey & Co. Solicitors,  
Law Chambers, Fair Street, Drogheda, Co. Louth

**The claims under the Minimum Notice and Terms of Employment Acts 1973 to 2005 and under the Organisation of Working Time Act 1997 were withdrawn.**

**Respondent's Case:**

The head of HR gave evidence. The respondent's business is bookmaking. The business expanded in 2008. They opened shops in shopping centres that subsequently did not become fully tenanted. When the business environment became more difficult the respondent looked for

ways to cut costs. Premium payments for working on Sundays were reduced from double time to time and a half. Also some shops were run by one staff member in the mornings.

In 2009 the respondent had about 950 staff. The number of staff increased in 2011 due to the respondent buying shops from two different groups who ceased trading.

In January 2010 redundancies were needed in the call centre. 2 members of staff were made redundant and a third left to travel. The head of HR advised and supported the line managers. She did not decide who would be made redundant.

The call centre manager met with her staff on Friday 22 January 2010 and informed them that redundancies would be required. The head of HR did not attend this meeting. On the following Monday the head of HR and the call centre manager met with the claimant. The call centre manager informed him that he (his position) was being made redundant. No alternative role for the claimant was discussed. She explained the criteria on which the decision was based. The claimant was concerned that his warnings for being late for work would be taken into consideration. The call centre manager assured him that that matter had been dealt with. The head of HR told the claimant that he would be paid in lieu of notice and he would also receive 2 weeks' pay as an ex-gratia payment. The head of HR also gave the claimant her phone number in case he had any queries. He did not contact her.

The call centre manager gave evidence. She was informed about a week in advance of the redundancy situation. She called the staff to a meeting on Friday. She informed them that redundancies would need to be made in the call centre. She had been told that 80 hours had to be cut. No minutes were taken at the meeting. A part time employee volunteered to take redundancy and another member of staff left to travel. She did not set out the exact criteria on which she would base her decision on who would be selected for redundancy. She asked if there were any queries but no one raised a query.

The call centre manager drew up the list of criteria for the call centre selection. The criteria were Attendance, Punctuality, Length of Service, and Quality of work and Warnings. She also devised a scoring system. She assigned a score to each member of the call centre for each of the 5 criteria. The score for Quality of work was based on the assessments made by the quality manager.

When the call centre manager together with the head of HR met the claimant to inform him that he would be made redundant, he acknowledged her evaluations and did not raise any complaints. The claimant did raise a query in relation to his late attendance record and these were addressed at the meeting of 25<sup>th</sup> January 2010.

There was no consultation, other than the general meeting of 22<sup>nd</sup> January 2010, with the claimant and there was no discussion in relation to alternatives to redundancy for the claimant. The centre manager took the decision to make the claimant redundant based on him being one of the lowest scorers in the evaluation process and conceded that one late would reduce the overall score by as much as the value of a year's service.

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

The claimant commenced employment with the respondent on 3<sup>rd</sup> March 2008 and was dismissed, by way of redundancy, on 25<sup>th</sup> January 2010. He was employed as Call Agent in the respondent's bookmaker call centre and earned approximately €450.00 per week.

There was a general staff meeting held on 22<sup>nd</sup> January 2010 and the claimant was at that meeting. The centre manager conducted this meeting and informed the staff that it would be necessary to cut 80 hours from the pay-roll. The claimant asked would this affect part-time or full-time staff and was told by the Centre Manager that she did not know. There was no mention of redundancy at that meeting and the first time the claimant heard that he was to be made redundant was at the meeting between himself and the centre manager on the following Monday.

The claimant was not consulted in relation to the criteria used in selecting him for redundancy prior to him being told he was selected. He was not given an opportunity to explore alternatives to being made redundant and was not told that he had a right to appeal that decision. New staff were taken on in May 2010 and the claimant was not informed that he could apply for these jobs.

At the meeting of 25<sup>th</sup> January 2010 the claimant queried the accuracy of his late attendance record and 3 out of five dates he questioned were wrong. He wanted them all checked but the centre manager told him that I.T. were too busy to do so. The claimant also alleged that some absences were recorded as unauthorised when in fact he had submitted doctors notes for them and those notes had not been recorded by the respondent.

The representative for the claimant contended that there may not have been a genuine redundancy situation as new staff were taken on shortly after the claimant was made redundant. He also contended that the claimant was unfairly selected for redundancy.

### **Determination:**

On the 25<sup>th</sup> January 2010 the claimant was advised that his position was being made redundant. The selection criteria - Attendance, Punctuality, Length of Service, Quality of Work and Warnings - was discussed with the claimant. While the claimant was concerned that his warnings for being late for work would be taken into consideration he was assured by the call centre manager that they were not. The head of HR gave the claimant her phone number in case he had any queries in relation to the selection criteria but he did not contact her.

There was no consultation, other than the general meeting of 22<sup>nd</sup> January 2010, with the claimant and there was no discussion in relation to alternatives to redundancy for the claimant. The centre manager took the decision to make the claimant's position redundant based on his being one of the lowest scores in the evaluation process.

The Tribunal is not satisfied that the Respondent dealt with the redundancy situation entirely as a reasonable employer should have done in the circumstances. While the Respondent did draw up

the criteria on which it would base its selection criteria for redundancy and did meet the claimant, it did not consider any other roles for the claimant, as a reasonable employer would have done in the circumstances. Neither was the Tribunal entirely satisfied with the consultation process and accordingly deems the dismissal unfair. The Tribunal further notes that the claimant did not appeal the decision to make his position redundant which is surprising. The Tribunal considers compensation the most appropriate remedy and awards the claimant €3,000.

It is noted that the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 were withdrawn by the claimant.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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