

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD1088/2011

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr. A. O'Mara
Mr. S. O'Donnell

heard this claim in Dublin on 22 October 2012

Representation:

Claimant(s):

No legal or trade union representation

Respondent(s):

Mr Ray Browne, 'Shirvin', House 16, 150 Howth Road,
Clontarf, Dublin 3

The determination of the Tribunal was as follows:-

The Claim

An unfair dismissal claim was brought in respect of a storeman regarding an employment from 20 November 2009 to 3 December 2010 after dismissal notice was received on 18 November 2010.

The claimant's case was that he started work in a kitchen manufacturing business (run by a man hereafter referred to as LT) on 10 September 2004 and worked there until 17 November 2009

and liquidation of the company. The next day, he began work for a kitchen retail company (also managed by LT).

On 9 April 2010 the claimant had an accident at work injuring his left shoulder when taking kitchen worktops from a truck. From then he was unavailable and waiting for a second hospital appointment. It was alleged that the claimant's employer (LT) was very unhappy because the claimant claimed damages from the Personal Injury Assessment Board and the claimant's wife (who also worked for LT) had made claims in respect of holiday pay and allegedly unpaid P.R.S.I. contributions.

It was alleged that all of the above factors had contributed to the claimant being unfairly dismissed while remaining on sick leave following an accident at work and compensation was sought.

It was disputed that there had been adequate and sufficiently timely attempts to consult with the claimant (a non-national who relied on his wife to make up for his lack of proficiency in English) before the respondent made the claimant's post redundant.

The Defence

The respondent disputed the unfair dismissal claim. It was acknowledged that the claimant had commenced employment with the respondent (the abovementioned kitchen retail company) on 20 November 2009 on a fixed-term contract of employment which ended on 22 December 2009. However, the claimant was re-engaged by the respondent on 4 January 2010 as a general operative under a new fixed-term contract which he declined to sign but operated under until the time of his accident forcing his absence.

Business conditions continued to decline during the period of the claimant's absence and the respondent took a number of steps to address the position including two rounds of general pay cuts in both June and September 2010.

It quickly became clear that these actions were insufficient and that further actions would be needed. This resulted in eight members of staff being let go (of whom the claimant was one) during the November/December 2010 period.

The claimant was invited to attend at the workplace during his absence in order that the respondent might engage with him on both his contract and the worsening business situation. The claimant declined to attend any such meetings and was eventually dismissed by reason of redundancy on 18 November 2010.

Determination:

The Tribunal rejected the argument that the claimant did not have a full year's service with the respondent (subsequent to his acceptance of a redundancy lump sum in respect of prior employment) because the notice period to which he was entitled in respect of a final redundancy (regarding employment commenced on 20 November 2009) would bring him over a year's service. The Tribunal does not regard as material to this any argument that the claimant had already received remuneration such that there was no remuneration due to him in respect of his notice period.

The Tribunal does not dispute that the claimant's final employment with the respondent ended due to redundancy but the Tribunal allows the claimant's claim under the Unfair Dismissals Acts, 1977 to 2007, because the Tribunal was not satisfied that the respondent had allowed enough time for proper consultation with the claimant before his final redundancy. As the claimant had remained unfit for work since his injury the Tribunal found no loss had been incurred as he was unavailable for work. However, as the unfair dismissals legislation allows the Tribunal to award up to four weeks' pay as compensation when there is no established loss, the Tribunal unanimously awards the claimant the sum of €1,500.00 (one thousand five hundred euro) as compensation in finding that he was unfairly dismissed within the meaning of the Unfair Dismissals Acts, 1977 to 2007, because the Tribunal did not find that there had been satisfactory measures to consult with the claimant (a non-national who relied on his wife to speak English on his behalf) with regard to exploring alternatives to making his post redundant.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)