

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

claimant

RP1150/2011

UD844/2011

MN955/2011

WT344/2011

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: Ms. M. Levey B.L.

Members: Mr D. Peakin
Mr. S. O'Donnell

heard this claim at Dublin on 7th November 2012

Representation:

Claimant(s): Mr Krystian Boino, JC Hoban & Co. Solicitors, Suite 114, The Capel
Building, St. Mary's Abbey, Dublin 7

Respondent(s) Mr. John Barry, Management Support Services (Ireland)
Limited, The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:-

The claims under the Redundancy Payments Acts, 1967 to 2007, the Organisation of Working Time Act, 1997 and the Minimum Notice and Terms of Employment Acts 1973 to 2005 were withdrawn on the day of the hearing

Summary of Evidence

The claimant commenced employment in location B on the 3rd September 2008 as a cleaning operative. A transfer of undertaking took place and the respondent took over the cleaning contract. Location B was considered a five star building. His hours of work were from 7a.m.

until 3.30p.m. He had to check the toilets/dispensers on a regular basis and ensure that supplies were maintained. He had to wear a uniform and a tie and he had to be clean shaven. His employment was uneventful until early January 2011 when he was reprimanded by his supervisor GB about his performance in work and his appearance.

By letter dated 14th January 2011 he was given a verbal warning from HR. The claimant did not receive this letter until he returned from holidays on the 29th January 2011 and it was date stamped the 24th January 2011. This letter alluded to his work performance and not his appearance. He was informed that he could appeal this verbal warning after five days.

The claimant met with JC operations manager and his supervisor GB offsite on 19th January 2011. The claimant was told that he could not return to work at location B. He was informed by letter dated 21st January 2011 that there would be restructuring in Location B but that full time positions were available in the respondent. The claimant had a part time job which commenced at 6p.m. The claimant was on holidays at the end of January 2011.

On return from holidays the claimant contacted his supervisor GB on Saturday 29th January and informed her that he was returning to work on Monday 31st January to Location B. The supervisor advised him not to report for work at Location B. The claimant reiterated that he was going to report for work at Location B on Monday. The supervisor GB contacted the operations manager JC who sent a letter to the claimant on Sunday 30th January 2011 that he should attend a meeting.

The claimant met EC an employee of the respondent on the 31st January 2011. He was offered two alternative jobs, one in a city centre location from 10a.m. until 6p.m. and the other as part of an industrial crew from 8.00a.m to 4.30p.m. The claimant refused both these offers as he had a part time job which commenced at 6p.m. and he felt that there was no guarantee that he would be able to report for work at 6p.m.

The claimant sent numerous e mails to the respondent in February, March and April 2011 in which he outlined he was waiting for a suitable alternative offer. The respondent maintained that the claimant requested his P45 in January 2011 and the claimant maintained he sought his P45 in March 2011. The claimant received P45s dated 19th January 2011, 18th March 2011 and 4th April 2011. The claimant obtained alternative full time employment in March 2011 at a lesser rate of pay.

Determination

Having considered all of the evidence the Tribunal are of the view that the alternatives offered to the employee were reasonable in all the circumstances and consistent with the provision of his employment contract. While the claimant engaged with his employer through various e mails the claimant did not engage fully with his employer with regard to negotiating other alternatives. It appears that his part time job took precedence over his full time job in terms of him accepting the redeployment offered by the respondent. In the circumstances dismissal is not unfair and his claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

As the claims under the Redundancy Payments Acts, 1967 to 2007, the Organisation of

Working Time Act, 1997 and the Minimum Notice and Terms of Employment Acts 1973 to 2005 were withdrawn no awards are being made under these Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)