

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD680/2011
RP942/2011
MN737/2011
WT278/2011

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 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: Ms. M. Levey BL

Members: Mr. R. Prole
Ms. M. Mulcahy

heard this case in Dublin on 28 December 2012

Representation:

Claimant(s):
Mr Shane Healy, Healy O'Connor, Solicitors,
77 Sir John Rogerson's Quay, Dublin 2

Respondent(s):
No attendance by or on behalf of the respondent

The determination of the Tribunal was as follows:-

Claims were brought under unfair dismissal, redundancy, minimum notice and working time legislation in respect of an employment that began in late July 2006 and ended without notice on 16 November 2010. The claimant had been a ground refuelling operative at an airport. It was alleged that no overtime had ever been paid and that he had not received the statutory rest periods, any contractual salary review or even his redundancy payment. It was alleged that he had been unfairly dismissed on grounds of purported redundancy because no proper procedures were adopted by the employer (hereafter referred to as the respondent) surrounding the dismissal. It was submitted that the claimant had been unfairly selected by PM (the claimant's manager) due to a personality clash.

The respondent's defence was that it intended to dispute all claims.

At the hearing the Tribunal was told that the claimant had received a redundancy lump sum (€5,443.20) and that the claims under redundancy and working time legislation were withdrawn but that the claimant was proceeding with his claims under unfair dismissal and minimum notice legislation. It was submitted that there had been a sham redundancy and that the claimant had been dismissed without notice on 16 November 2010.

Giving sworn testimony to the Tribunal, the claimant confirmed that he had refuelled aircraft at an airport. He claimed to have earned €714.00 per week and that he had worked up to eighty-four hours per week at a Ryder Cup time. In 2007 one member of his team left whereupon three people did the work of four.

The Tribunal was furnished with a copy of a letter dated 21 February 2008 from the claimant to PM (the abovementioned airport manager). In the letter the claimant alleged that he had been asked to work a dangerous number of hours without overtime pay or time in lieu and warned that this problem could arise again which, if it did, would breach legislative provisions.

The claimant told the Tribunal that, subsequent to his sending PM the above letter, he was singled out for unfavourable treatment such as being scheduled to work on the last day of holidays he had applied for (thus reducing his holidays) and being asked to use his hand (without protective equipment) to feel for a sewage blockage. He told the Tribunal that his relationship with his employer became negative and that he and TMC (a colleague) were asked to train in AC (who had no qualifications but was related to the respondent's accountant).

In September 2010 the claimant was laid off for six weeks. Then he got a letter extending it. Shifts that the claimant felt he should have got were given to other people. The claimant believed that PM had a personal issue with him. The respondent produced a matrix (of which PM was the author) by which the claimant was ultimately made redundant (rather than AC whom the claimant had helped to train and who had much less service than the claimant). The claimant had secured a fuel contract for the respondent and had helped to put together a proposal which PM said would not be entertained. He felt that he had been hard done by but was financially forced to accept redundancy although he felt that his hours had just been given to others and another person (LM) had been taken on in 2011.

Asked why he had not raised a grievance and objected to his redundancy, the claimant just replied that PM had said that the respondent's chief executive had made the decision. The

claimant said that he had only received his contract when his employment was being terminated and that the only person to whom he had an avenue of complaint was PM i.e. the very person who had a personal issue with him.

Since being made redundant without notice on 16 November 2010 the claimant had only succeeded in obtaining four months' part-time work. He was a qualified pilot but he felt that the respondent had damaged his character in the industry. He had sought work outside the industry but he had not been successful.

Regarding his pay with the respondent, the claimant said that he had been paid fourteen euro per hour (and, therefore, earned €560.00 for a forty-hour week). He said that he had worked long hours and had averaged €714.00 per week.

Giving sworn testimony to the Tribunal, TMC said that he had worked for the respondent for some eleven years until 2011. He had been the claimant's supervisor i.e. at a level between that of the claimant and PM. TMC had got on all right with PM without being personally close.

Asked about the working relationship between the claimant and PM, TMC replied that the claimant was punished for any discrepancy although he (TMC) was not. TMC was not taken to task for taking extra time at breaks although the claimant was. TMC felt that the claimant had been victimised. He said that the claimant's hours had not disappeared but had just been given to others.

TMC said that he never got a matrix nor a contract.

No-one attended the Tribunal from or on behalf of the respondent to contest the claimant's unfair dismissal and minimum notice claims.

Determination:

Regarding the unfair dismissal claim the Tribunal finds, on the uncontested evidence of the claimant, that the claimant was badly treated and unfairly dismissed but that he contributed to his dismissal by not raising a grievance about his purported redundancy which he, albeit impecunious at the time, had appeared to initially accept without quibble before ultimately making an unfair dismissal claim to the Tribunal. In all the circumstances of the case, the Tribunal, allowing the claim under the Unfair Dismissals Acts, 1977 to 2007, deems it just and equitable to award the claimant the sum of €30,000.00 (thirty thousand euro) under the said legislation (this amount being equivalent to 53.57 weeks' gross pay at €560.00 per week and being in addition to any redundancy or other payments already made to the claimant in connection with the termination of his employment).

In addition, the Tribunal, allowing the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, awards the claimant the sum of €1,120.00 (this amount being equivalent to two weeks' gross pay at €560.00 per week) under the said legislation.

Note: Accepting that the claimant's hourly rate was fourteen euro, the Tribunal assesses his gross weekly pay as at a standard forty-hour week and, therefore, €560.00 per week.

The Tribunal notes that the appeal under the Redundancy Payments Acts, 1967 to 2007, and the claim under the Organisation of Working Time Act, 1997, were withdrawn.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____
(CHAIRMAN)