

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *claimant*

RP1849/2011
UD1383/2011
MN1482/2011
WT554/2011

Against

EMPLOYER - *respondent*

**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: Mr D. Hayes BL

Members: Mr. A. O'Mara
Mr F. Keoghan

heard this claim at Dublin on 4th December 2012

Representation:

Claimant(s): Ms. Alison Hough BL instructed by Keans, Solicitors,
2 Upper Pembroke Street, Dublin 2

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

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant told the Tribunal that he commenced employment with the respondent on the 18th May 2005 as a driver. 2010 was a difficult year in the respondent. Up to July 2010 he worked two and a half hours more than other drivers. He commenced work at 6a.m. and finished between 7 and 9p.m. He was not paid for all the hours he worked. He undertook work on the M50 in the last two years of his employment. He was forced to work on the night shift for which he received €50.00 to €70.00 more per week. He was informed that if he did not work the night shift he would not be offered the next day job. After one year of this he and other employees organised meetings and tried to explain that he could not work at night. He had regular employment until July 2010. He was paid approx. €750.00 to €850.00 per week. He

had difficulty with long hours and huge loads. He had fewer hours in 2010 and his salary depended on hours worked. At one point he did not know if he was going to be working from day to day. In November 2010 he was in receipt of supplementary social welfare. At this time some drivers worked five to six days a week and others got one or two days per week. Two days prior to his dismissal he was informed that the respondent was going to close. Employees were told to sign a document to enable them to obtain some compensation.

After he was dismissed eight to nine drivers were retained in the respondent for another six months. He had worked since 2005 and employees with less service than he had were not selected for redundancy. He received a redundancy lump sum payment. The loss of his job affected his sleep, he lost a considerable amount of weight and suffered from depression.

Since his dismissal he endeavoured to obtain alternative employment but was unsuccessful.

Determination

On the uncontested evidence of the claimant the Tribunal finds that the claimant was dismissed. There was no evidence before the Tribunal to rebut the statutory presumption of unfairness. The Tribunal is therefore satisfied that the claimant was unfairly dismissed and, finding that compensation is just and equitable in all the circumstances awards the claimant €5,000.00 under the Unfair Dismissals Acts 1977 to 2007 and in awarding this amount takes into account that the claimant received a redundancy lump sum payment.

The claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, the Organisation of Working Time Act, 1997 and the Redundancy Payments Acts 1967 to 2007 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)