

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE - *claimant*

CASE NOS.  
UD709/2011  
RP986/2011

against

EMPLOYER – *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr R. Maguire BL

Members: Mr T. O’Sullivan  
Mr M. O’Reilly

heard this appeal at Dublin on 3<sup>rd</sup> September 2012

Representation:

Claimant: Ms Mary Gordon BL instructed by Ms Teresa Howell of  
Howell & Co Solicitors, 2 Tower Road, Clondalkin, Dublin 22

Respondent: Mr Tim O’Connell of IBEC,  
Confederation House, 84/86 Lower Baggot Street, Dublin 2

The decision of the Tribunal was as follows:-

The claim under the Unfair Dismissals Acts, 1977 to 2007 was withdrawn.

#### **Claimant’s Case**

The claimant gave evidence. He commenced working for the respondent in June 2006. In the beginning he worked in slicing and later he worked in despatch making up orders for the van delivery drivers. He worked according to a roster that was drawn up every week. Each week he was informed of his hours for the following week.

The claimant was paid for holidays and the respondent paid his PRSI contributions.

The claimant received a letter from the despatch manager dated 21 July 2009 informing him that the despatch system was being restructured and as a result his hours of work would reduce. September 2009 was the last month he worked. His last day at work was a Sunday. He expected

to work the following week but the despatch manager did not contact him. After a few weeks he phoned the despatch manager who asked him to have patience because there was no work for him. None of the full time workers were taking holidays and therefore there was no cover work for him. He phoned the despatch manager on a number of subsequent occasions but was told to be patient.

The claimant did not abandon his job. He was aware of the Grievance procedure but did not feel that it would be worthwhile to raise a grievance and neither did he raise the issue with the Worker Committee.

When his patience was exhausted he served an RP9 on the respondent on 14 February 2011. The despatch manager had not told him he was on lay off. The claimant believed he had been a good worker and he had enjoyed his job.

### **Respondent's Case**

The despatch manager gave evidence. Two teams of 9 people report to him. The claimant was on the casual contract list. He was one of several casual people who could be relied on to come to work when needed.

The despatch manager would draw up the roster on Thursday for the following week. The full time people were rostered first and then the remaining shifts allocated to casual employees. He would inform any casual employees who were at work on the Thursday of their hours and he would phone the others.

The despatch manager wrote to the claimant at his home address in July 2009 to inform him that the despatch system was being restructured. In real terms this resulted in more productivity expected from the full time people. The claimant continued to work an average of 4 days a week.

At the end of September he expected the claimant to continue working. He phoned the claimant on a number of occasions. On one occasion the claimant was in Naas and could not get back in time for the shift he was offered. On a number of other occasions the despatch manager phoned the claimant but failed to make contact. There was work available for the claimant. The despatch manager did not put the claimant on lay off and neither did he tell him to have patience. Nobody was made redundant in the despatch area. The claimant remained on the casual list. The claimant never contacted the despatch manager. The claimant disappeared and when he returned he claimed redundancy.

### **Determination:**

The Tribunal carefully considered the evidence adduced. Despite the conflict in the evidence the Tribunal find both sides believable. Clearly there was a breakdown in communications in this case. In such circumstances there is a greater responsibility on the respondent to dispel the confusion that had arisen between the parties. The Tribunal notes that the despatch manager had written to the claimant at his home address to inform him of the restructuring of the despatch system and consider that it would have been appropriate to write to him to dispel the confusion concerning his roster.

Following the termination of the claimant's employment he was not replaced. The work

was done with fewer employees. This amounts to a redundancy situation. Therefore the claimant is awarded a redundancy lump sum based on the following information:

Date of Birth	13 November 1980
Date Employment Began	09 June 2006
Date Employment Ended	14 February 2011
Gross Weekly Pay	€483.68

This award is made subject to the claimant having been in insurable employment under the Social Welfare Acts during the relevant period.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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