

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE - *Claimant*
UD157/2011

CASE NO.
RP197/2011

MN162/2011
WT35/2011

Against

EMPLOYER - *Respondent*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. L. Tobin
Mr J. Jordan

heard this claim at Wicklow on 6th December 2012

Representation:

Claimant: In Person

Respondent: Mr. Hugh Byrne, B.L., W.R. Joyce & Co., Solicitors, 18 Main Street, Arklow, Co. Wicklow

The determination of the Tribunal was as follows:-

At the outset of the hearing the claimant formally withdrew his claims under Redundancy Payments Acts, 1967 to 2007, Minimum Notice and Terms of Employment Acts, 1973 to 2005, and Organisation of Working Time Act, 1997.

Respondent's Case

The Tribunal heard evidence from AS, director of the respondent company. The respondent is an electrical wholesale company selling cables etc. to trade market and washing machines etc. to the retail market. The claimant was employed by the respondent as a delivery man.

In 2007 the company employed 14 staff. Currently there are 3 employees in the company. From 2007 to date the company experienced a sharp decline in sales. The respondent tried to

implement changes to improve the cost effectiveness of running the company. The respondent placed all staff on reduced hours.

The claimant was employed as a delivery man. In 2008 a new shopping centre opened in the town resulting in a reduction of customers for the respondent company. The construction industry was also experiencing a downturn.

In 2010 the respondent's business was extremely quiet. The claimant was aware that business had reduced and on 19th May AS asked the claimant if there were many deliveries scheduled for the day. The claimant informed her that there were two. AS asked the claimant how he'd feel about taking one month off and he enquired as to what would be the outcome if things remained the same in one month's time. AS explained that if the situation was the same in a month's time then they would look at redundancy as an option.

On 2nd June 2010 the claimant came to AS and said that he was leaving. On the following day AS issued the claimant with a cheque for his statutory redundancy entitlement. Any outstanding wages and holiday money owed were automatically paid to the claimant's bank account the following Friday.

AS told the Tribunal that the claimant was able to man the stores but this was already operated by an employee and AS's husband, another director of the company.

The claimant was made redundant on 2nd June 2010. On 21st September 2010 AS's husband had a stroke and was admitted to hospital. The following morning AS received a phone call from a previous employee's father enquiring if there was anything that they could do to help. AS asked if the employee (IOT) was available to help out.

IOT had worked for the respondent for the summer of 2008 and was capable of doing a lot of the jobs within the company. He helped out with everything within the respondent company up until after Christmas. He worked 23 weeks for an average of 18 hours per week from September 2010 until February 2011, when AS's husband returned to work.

At the time of the claimant's redundancy AS could not accommodate him elsewhere in the company because it would have resulted in another employee being dismissed. AS also felt that it was the position of delivery man that was being made redundant and not the employee.

The claimant told the Tribunal that he did not offer to leave his employment one week into his one month break. The claimant went to the respondent company on 2nd June 2010 after his last delivery and AS did not have his redundancy paperwork completed. He was told to return on the Thursday which he did.

When the claimant returned on the Thursday AS still did not have his redundancy ready. She asked the claimant if he wished to wait before processing the redundancy. He enquired if the outcome would be different if he waited. The claimant had previously asked why he was being chosen for redundancy and was informed that it was just the driver's position that was being made redundant. The claimant felt he was treated badly throughout the process.

Determination

Having carefully considered the evidence adduced by both parties at the hearing the Tribunal

finds that the claimant's redundancy situation was poorly handled and resulted in him being dismissed unfairly from his employment. In the circumstances the Tribunal finds that the appropriate remedy is compensation. Taking into consideration the statutory redundancy payment already received by the claimant, the Tribunal awards the claimant the sum of €1,300.00 under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)