

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.
UD1766/2009
RP1986/2009

EMPLOYEE *-claimant*

MN1697/2009
WT737/2009

against

EMPLOYER 1 *-first named respondent*

EMPLOYER 2 *-second named -respondent*

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. K.T. O'Mahony B.L.

Members: Mr. W. O'Carroll
Mr D. McEvoy

heard this claim at Tralee on 14th July 2010

Representation:

Claimant: Mr. Con Casey, Siptu, Connolly Hall,
Upper Rock Street, Tralee, Co Kerry

Respondent: Mr. Oisin Scollard, Employment Clinic,
32 Lower Lesson Street, Dublin 2

The determination of the Tribunal was as follows:-

Background:

The claims under the Unfair Dismissals Acts 1977 to 2007 and the Organisation of Working Time Act, 1997, were withdrawn at the outset of the hearing.

Summary of Evidence

The claimant contended that he commenced employment with CB, who had a courier business, in June 2004. His position was that the Kerry run was taken over by the second named respondent in August 2008. While working for CB he received a phone call from him asking if he would like to work for the second named respondent and the following week he commenced employment with the second named respondent, who also ran a courier service and had taken over his run. There was

no break in his service. He delivered the same products (motor car parts) to the same shops. He had worked part-time with CB and initially he worked part-time with the second named respondent but from around end March/beginning April 2009 he worked full-time for the second named respondent. On 16 July 2009 the director of the second named respondent told him that due to lack of work he was letting him go the following day, 17 July 2009.

The director of the second named respondent company explained that the company was formed in August 2008 and commenced trading the same month. The company delivered motor car parts. Of its workforce 50% were employees and the other 50% were independent contractors. CB told him that he was getting out of the courier business. When CB ceased trading the second named respondent took over the Kerry run; no money changed hands. In late September 2008 he was looking for a part-time courier and CB recommended the claimant. He contacted the claimant who commenced working with the second named respondent on 2 October 2008, doing 15/16 hours per week. The director maintained that he issued a contract of employment to the claimant but that he neither signed nor returned it to him. When the second named respondent's business expanded the claimant's hours were increased to 35-39 hours per week. The director acceded to the claimant's requests and twice increased his pay, by 13% and later by 21%. Major competitors such as DHL entered the market and the second named respondent suffered a downturn in its business around end May/beginning June 2009. He told all his employees and workers more than once the business was contracting and around the end of June he told them that he would be making a decision in July as to who would be losing their jobs. On 7 July 2009 the second named respondent made the formal decision to wind up the company and informed the employee by way of verbal notice on 9 July 2009. The omission of the commencement of the claimant's employment date on his P45 was an administrative error.

Determination:

The claim against the first named respondent is dismissed.

The Tribunal determines that there was a transfer of undertakings in the above case from the CB to the second named respondent in autumn 2008. Accordingly, the claimant has continuity of service from the date of the commencement of his employment with CB. As his employment with the second named respondent was terminated due to lack of work the claim under the Redundancy Payments Acts, 1967 to 2007 succeeds and the claimant is entitled to a redundancy lump sum based on the following information:

Date of birth:	20 November 1967
Date of commencement:	10 June 2004
Date of termination:	17 July 2009
Gross weekly pay:	€550.00

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

The Tribunal awards the claimant compensation in the sum of €1,540.00, being equivalent to two weeks' and four days' pay, in lieu of notice.

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Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)