

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE 1 *-claimant A*

CASE NO.

UD1175/2011

RP1528/2011

MN1260/201

WT474/2011

EMPLOYEE 2 *-claimant B*

UD1216/2011

RP1591/2011

MN1308/2011

WT498/2011

EMPLOYEE 3 *-claimant C*

UD1217/2011

RP1592/2011

MN1309/201

WT499/2011

against

EMPLOYER *-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: Mr T. Ryan

Members: Mr J. Reid
 Mr J. Flannery

heard this claim at Dublin on 6th November 2012

Representation:

Claimants: Mr. Will Kelly B.L. instructed by O'Hanrahan & Co, Solicitors,
 Lexington House, 71 Ballybough Road, Fairview, Dublin 3

Respondent: The company accountant

The claims under the Redundancy Payments Acts, 1967 to 2007, the Minimum Notice Terms of Employments Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 were withdrawn during the hearing.

Summary of evidence:

It was the evidence of the company accountant that the claimants were made redundant in September 2010. The accountant outlined that the respondent company was forced to make this decision due to the serious reduction in business levels.

He was unable to give evidence in relation to the selection of the employees as this was carried out by the Contracts Manager, whose position has also been made redundant.

At the time of the redundancies the company had eight temporary staff members who were employed in July 2010 to work on a specific project. On the 10th September two of these eight temporary employees were also made redundant. Two more subsequently finished on the 17th September 2010. The final four temporary employees finished on the 24th September 2010.

Subsequently, on the 15th October 2010 the company first became aware that other work was available. The company accountant stated that at the time the company contacted the National Employment Rights Authority (NERA) and were advised to avail of a “cooling off period” after the redundancy of its permanent employees, which included the claimants.

Consequently, the eight temporary employees were re-hired until this new work was completed. They were subsequently made redundant on 31st December 2010. They have, on occasion, since worked for the respondent company on a temporary basis. The company accountant did not know whether or not the claimants were contacted in relation to this work.

During cross-examination a list of 27 employee names was put to the witness. It was the claimants’ case that the respondent company engaged no less than the 27 additional staff since they were made redundant, and that 16 of these staff remain in the respondent’s employment which was accepted by the company accountant. The company accountant stated that the employees listed were employed by the company on a temporary basis from time to time, following the claimants’ redundancies. He stated that a decision was taken to implement redundancies in September 2010 as the company only had three projects which were all coming to an end. Short-time was not considered as an option as at that time there was only some small work to be completed on the existing projects and it was thought that the fairest thing was to implement a small number of redundancies instead.

It was put to the witness that the company’s T2 forms state that a “last in first out” policy had applied but that some staff with shorter service were retained. The company accountant stated that only some temporary staff were retained for two weeks following a project overrun. Since that time temporary staff have been re-hired on a temporary and short-term basis. Staffing is now carried out on a contract by contract basis and the company accountant submitted a document to the Tribunal detailing the reduction in turnover from year to year.

It was put to the company accountant that if the claimants had been placed on lay-off rather than made redundant in September 2010, they would have had a steady stream of work about six weeks later. The company accountant conceded this was a possibility. He accepted that the claimants had longer service than some of the comparable employees.

In reply to questions from the Tribunal, the company accountant stated that of the list of 27 employees, ten were employed when the claimants were made redundant. Of these four were made redundant and six fixers remained.

Claimant B gave evidence that he received a letter from the respondent company on the 16th August 2010 which stated that there was no further work available. This was the first indication to the claimant that his position was to be made redundant. A manager informed the claimant that he should attend a meeting but when the claimant arrived the meeting had concluded. A process of last in, first out was not outlined to Claimant B. Claimant B stated that all of the remaining employees, with the exception of one, had shorter service than he did. Claimant B received a lump sum redundancy payment of €7,600 following the termination of his employment on the 10th September 2010. He confirmed to the Tribunal that he did not receive any contact from the company following the termination of his employment. Claimant B gave evidence of loss and of new employment he held until January 2012. In addition Claimant B gave evidence of a personal situation which means at the current time he is unable to seek work.

Claimant C gave evidence that he also received a letter but on the 27th August 2010 stating that there was no further work and that his position was redundant. This was the first notification he received that his position was redundant. He stated that he had longer service than the remaining employees. Claimant C's employment subsequently terminated on the 10th September 2010 and he received a lump sum redundancy payment of €6,849.86. He gave evidence of loss and efforts to mitigate that loss.

Claimant A gave evidence that he received a similar letter to his colleagues on the 27th August 2010, to the effect that his position was being made redundant due to a lack of work. His employment terminated on the 10th September 2010 and he received a lump sum redundancy payment of €6,797.26. Claimant A gave evidence of loss.

Determination:

The company was trading poorly but Tribunal has no option but to find that the Claimants were unfairly dismissed, as the respondent did not prove otherwise. Every dismissal is deemed to be an unfair dismissal until the contrary is proven.

Irrespective of whether the company was advised to have a "cooling off period" (and the tribunal makes no finding in this respect) the company could have offered work to the Claimants after this period had elapsed.

Having taken the totality of the evidence into consideration the Tribunal determines that Claimants A and C should be re-engaged with effect from the 30th July 2012.

The Tribunal determines that compensation is the most appropriate remedy in respect of

Claimant B and awards him € 7,500.00. For the avoidance of doubt this amount is in addition to the redundancy payment already received by him.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)