

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE

- *claimant*

CASE NO.

MN1464/2011

UD1364/2011

against

EMPLOYER - *respondent*

under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr. W. O'Carroll  
Ms H. Murphy

heard this claim at Galway on 5th March 2013

Representation:

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Claimant(s) :

Respondent(s) : Director of respondent company

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn by the claimant's representative at the outset of the hearing.

### **Respondent's Case**

The Tribunal heard evidence from the respondent that the company is involved in the manufacture and supply of sausage meat, puddings and bacon. There was a general downturn in the business from 2008 onwards and the company is today trading at a loss. The company employed 31 people in 2011 but the downturn in business necessitated that the company make a number of employees redundant. In total the company made 6 employees redundant including the claimant, 3 of which were compulsory and 3 of which were voluntary.

The claimant was employed specifically in the production of sausages and was very important to the firm. (BD) director of the respondent company told the Tribunal that the claimant had previously requested to be put on a 3 day week on a number of occasions in 2010. He met with the claimant on 16 March 2011 and informed him of the company's deteriorating

financial circumstances. He informed him that he was putting him on a 3 day week, with a guarantee of 24 hours per week, but the claimant requested redundancy. He did not want to make the claimant redundant and asked him to consider his position over the weekend. The claimant considered his position over the weekend and informed the witness that he wanted to be selected for redundancy. There was no bad feeling between the parties and the claimant was paid his redundancy entitlement. His employment terminated on 5 May 2011.

He told the Tribunal that the claimant was not selected for redundancy, he requested to be made redundant. The claimant worked his notice period and during that time he trained two other employees in his duties during this period. These employees are employed on a part-time basis working 24 -32 hours per week.

He confirmed that no offer of a 3 day week was made to any other employees. He accepted that the claimant was not offered alternative employment within the factory. He confirmed that the company recruited a dispatch worker in the factory in or around the time that the claimant was made redundant and this position was not offered to the claimant.

### **Claimant's case**

The claimant gave evidence that he was familiar with all aspects of work in the factory. He commenced working for the respondent in June 1997 and remained working for the respondent until the termination of his employment in May 2011. He worked full time and never worked a 3 day week. He met with (BD) in March 2011 and was told that things were going bad in the company. He was told that he was either going to be made redundant or placed on a 3 day week. He was not given a guarantee that he would receive 24 hours per week. There was no consultation process involved and he was not offered any alternative work. He did not accept the offer of a 3 day week as he was told that it would not amount to 24 hours work per week. He accepted the offer of redundancy and trained two employees in his duties while working his notice period.

He gave evidence that an employee was recruited to a position in dispatch on 11 April 2011 but at no time was he (the witness) offered this position. He told the Tribunal that he had previously worked in dispatch and would most definitely have accepted that position if it had been offered to him. He has been unemployed since the termination of his employment with the respondent and has now entered a course of study.

He accepted that there was a downturn in the respondent's business. He accepted that he was offered a 3 day week but with reduced hours. He gave evidence that he did not seek to be made redundant. He accepted that he did enquire about working a 3 day week on an occasion in 2010 but he never worked a 3 day week. On 7 April 2011 he was subsequently offered a definite 3 day week by (BD) but he no longer trusted (BD) and told the Tribunal that communications had by this stage broken down.

### **Determination**

The Tribunal having carefully considered all the evidence adduced by the parties is of the view that the claimant's employment was terminated by redundancy. In implementing the decision to make the claimant's job redundant the respondent's behaviour is impugned by its failure to fully explore alternatives for the claimant and in particular in deciding not to offer the claimant

the dispatch job which had become vacant. The Tribunal recognises that the respondent's trading position at the time of the dismissal of the claimant was particularly difficult as the accounts show a substantial six figure net loss in 2011.

It is the Tribunal's view that the dismissal of the claimant was unfairly effected. A redundancy figure already paid to the claimant must be taken into account by the Tribunal in establishing any loss. The claimant has not worked since his dismissal and the Tribunal has not been furnished with any written evidence of job applications. In these circumstances the Tribunal is not satisfied that the claimant made sufficient efforts to mitigate his loss. The Tribunal heard further evidence that the claimant is now pursuing a course of education.

In all the circumstances the Tribunal finds the claimant was unfairly selected for redundancy and therefore unfairly dismissed from his employment. The Tribunal awards the claimant the sum of €32,268.00 under the Unfair Dismissals Acts 1977 to 2007. However, the Tribunal takes into account that the claimant has already received a redundancy payment of €17,268.00 and this amount should be deducted from the figure of €32,268.00 resulting in a final award of €15,000.00 under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

