

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM OF:**

EMPLOYEE - *Claimant*

MN1453/2011

**CASE NO.**

RP1812/2011

UD1353/2011

WT543/2011

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: Ms O. Madden B.L.

Members: Mr C. Lucey  
Ms. E. Brezina

heard this claim at Naas on 18th December 2012

**Representation:**

Claimant: Ms. Pamela Crehan, B.L., instructed by Mr. Andrew Coonan, Coonan Cawley,  
Solicitors, Wolfe Tone House, Naas Town Centre, Naas, Co Kildare

Respondent: Mr. Andrew Cody, Reidy Stafford, Solicitors, 1-3 Moorefield Terrace, Newbridge,  
Co Kildare

The determination of the Tribunal was as follows:-

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

The respondent company manufactures sills and lintels for the building industry. The claimant was employed as a delivery driver since April 2006. Prior to the downturn in the construction industry the respondent had twenty two employees and two full time delivery drivers. At present the number of employees has reduced to four. The claimant was the last employee made redundant and received his statutory redundancy payment from the Social Insurance Fund. The respondent informed the Tribunal that the claimant has not been replaced by another employee.

### **Respondent's Case**

The Tribunal heard evidence from SR, the managing director of the respondent company. He confirmed that the claimant was hired in 2006 as a delivery driver. At that time there was one other delivery driver employed by the company. In 2009 the respondent company began to suffer the effects of the economic downturn as the business was directly related to the construction industry.

In 2009 the claimant was placed on short time for a number of months. He returned to full time in 2010, but 2010 remained quiet and the truck was only required to make approximately one delivery per day. During the peak of the boom there were at least three deliveries per day, or nine or ten drops.

In December 2010 business was extremely quiet. The respondent needed to refurbish an office and offered the refurbishment to the claimant to keep him busy. The claimant took on the refurbishment which was completed at the end of February 2011. At this stage the amount of deliveries had reduced to two or three per week. SR decided to incorporate the delivery role into his own position and as a result the claimant's position was made redundant.

SR has continued doing deliveries since the claimant's termination of employment. SR did not possess a license for the company's articulated truck driven by the claimant and therefore he carried out deliveries in a 7.5 tonne truck. The company's articulated truck was sold in September 2011. SR confirmed that there was no suitable alternative work available for the claimant within the company.

During cross examination SR denied that a previous employee was reemployed by the respondent company to carry out deliveries. SR confirmed that at times the claimant would help his colleagues on the production line or deal with customers. However, these employees had longer service than the claimant.

SR did not enter into a period of consultation about the redundancy situation with the claimant because there were no alternatives to discuss. Short time was not an option at this point because the company could not afford it.

### **Claimant's Case**

The claimant told the Tribunal that he commenced working with the respondent company as a delivery driver in April 2006. During his employment he carried out renovations and helped to make and clean moulds. He also cleaned the yards and the only job he never carried out was batching the concrete.

In 2009 the claimant was approached and told he had to take a pay cut. He said that he could not afford to take a pay cut but would work Saturdays for free instead. This was agreed and the claimant began to work two Saturdays per month. This arrangement continued for the following 6-8 months.

The claimant was placed on a 3 day week in 2010 up until November. He then carried out renovation work on a full time basis for the respondent company. On 8<sup>th</sup> March SR approached the claimant and informed him that his position was being made redundant. He was not offered any alternatives or consulted before the decision to make his position redundant was made.

The claimant told the Tribunal that after his employment was terminated he saw the company's

articulated truck on numerous occasions being driven by what he believes was a sub-contractor.

During cross examination the claimant confirmed that prior to carrying out the renovation work for the respondent he was working a three day week. He did not agree that being placed on short time meant that his job was in jeopardy because he was told it would only be temporary. The claimant confirmed that he received and signed his RP50 in respect of his redundancy entitlement.

**Determination**

The Tribunal have carefully considered all the evidence adduced during the course of this hearing.

The Tribunal is satisfied that the respondent in this instance suffered a significant economic loss as a result of the downturn in the economy. The Tribunal are further satisfied that the respondent engaged sufficiently in the consultation process to include putting him on short time along with the offer of other work.

The Tribunal are of the view that this was a genuine redundancy and therefore the claimant's claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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