

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD1522/11

RP2040/11

- claimant

MN1589/11

WT600/11

EMPLOYER

- respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P.Clancy

Members: Mr. D.Hegarty
Mr. F. Dorgan

heard this claim at Limerick on 15th April 2013.

Representation:

Claimant:

Respondent:

Respondent's Case:

The respondent is engaged in the security business. It has operations in Galway, Cork and Dublin and also in the UK. The company was incorporated some ten years ago.

DS is Managing Director in Ireland. The respondent wanted to expand its business in the Limerick region. DS was approached by a third party and introduced to the claimant. The claimant was well respected in the security industry. The claimant had his own company but had become bankrupt and his company went into liquidation.

The claimant was hired to develop and maintain the business in the Munster region. He was issued with a contract of employment. The company agreed to pay for his accommodation and cover his expenses. He reported to DS. The claimant looked after the day to day operations of the office. DS had a good working relationship with the claimant. He trusted the claimant. The claimant

managed his own holidays.

The claimant worked on his own initiative. He worked Monday to Friday. JD, Service Manager and two support administrative staff worked in the Limerick office also.

In the first year turnover was just under €2m. In sixteen months it collapsed to €800,000 which was a drop of 60%. The turnover kept reducing. Clients were going bust. In Dublin and Cork it dropped to between 10% and 15%.

In late 2009 and into 2010 JD discussed cost cutting measures with the claimant. On 28th September 2010 DS made the claimant aware that the company had lost €50,000.00 that year and that if there was no dramatic improvement the Limerick office would have to close. A 10% pay cut had to be implemented. The Limerick office was haemorrhaging and was being supported by other regions.

The business had to be restructured and the two administrative staff were made redundant on 1st June 2010 and JD was made redundant in November 2010.

The company was experiencing bad debts. In October 2010 DS and the claimant analysed the situation and came up with options. DS spoke to the Financial Controller. It was not possible to keep the Limerick office viable. The cuts the company had been making were not enough to justify the existence of the Limerick office in its current format. The office was running at a loss.

On 17th November 2010 DS told the claimant that he would have to be made redundant. He was given three months notice of the termination of his employment. DS looked for alternative work for the claimant within the company. There was no other similar role for the claimant. The only option for the claimant was to work as a patrol officer. The claimant did not take this seriously and just laughed and did not take up this offer of employment.

SB works as a patrol driver for the Limerick region and looks after rosters for patrol drivers. He has not taken over the claimant's role. The claimant has not been replaced in his role.

The claimant accepted that he would have to be made redundant and was paid his redundancy entitlement.

Claimant's Case:

The claimant had worked twenty five years in the security industry and had set up his own company. At its peak the company's turnover was between €6 and €7m per year with 145 employees.

In 2006/2007 the company ran into financial difficulties which resulted in arrears. In mid June 2008 the company went into liquidation.

The claimant was extremely well known in the security business and he always promoted best practice. He had been introduced to the respondent and was engaged by the respondent to manage the business in the Munster region. His accommodation and expenses were covered by the respondent. He had a good working relationship with DS.

He was never furnished with a contract of employment. While he took days off he was always on

call 24 hours seven days a week. He contended it was the nature of the business and he had to be available. He commenced bringing clients into the business as early as June 2008 but contended it was September 2008 before he began being paid by the respondent. He gave 100% of his time to the company as if it were his own company.

Thirty per cent of his work was construction based while the remaining 70% covered retail security, hotel security, patrol work and key holding.

While the claimant secured Limerick business this was subsequently being assigned elsewhere.

The claimant was in agreement that the business was declining but contended that there were prospective customers and the business could have been saved.

He had on-going consultations with DS regarding the reduction of business but he truly believed that this could be resolved over time. He took a pay cut in September 2010. He was aware that there was a possibility of the closure of the Limerick office.

He received an RP50 from the respondent and did not sign it at the time as he wished to be treated fairly by the respondent. He sought legal advice. He was not offered alternative employment within the company.

The claimant received his statutory redundancy payment. Since the termination of his employment he applied for many positions. He secured alternative employment abroad in February 2013.

Determination:

The Tribunal carefully considered the evidence adduced during the course of the hearing. The Tribunal is satisfied that the company began to encounter financial difficulties in the first three months of 2009. The two administrative staff initially took a pay cut in March 2009 followed by the claimant and JD taking pay cuts in September 2010. The claimant was aware at all times, through his consultations with DS of the continuing financial problems in the company.

The two administrative staff were made redundant in June 2010 followed by JD being made redundant in November 2010.

The Tribunal is satisfied that the claimant was offered an alternative role of Patrol Officer within the company but that he declined that offer. The claimant was aware that a final decision was being determined with regards to his employment after receiving notice in November 2010.

The Tribunal is also satisfied that a genuine redundancy situation existed within the company and the claimant was not unfairly selected for redundancy. The claimant received his statutory redundancy payment.

The claims under the Unfair Dismissals Acts, 1977, the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1967 to 2007 fail.

The Tribunal awards the claimant €3,846.08 under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)