

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE *-claimant*

CASE NO.

UD95/2012

against

EMPLOYER *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr J. Hennessy
Ms H. Henry

heard this claim at Thurles on 28th May 2013

Representation:

Claimant:

Respondent: The liquidator was notified of the date, time and venue of the hearing. Neither the liquidator nor a representative on his behalf attended the hearing.

Summary:

It was the claimant's uncontested evidence that he initially worked full-time with the respondent company but his hours were reduced to part-time during the course of the employment. The claimant was employed in a shopping centre. He worked 24 hours per week, earning a gross of €233 per week.

The claimant was content working part-time until the respondent company asked him to accept a redundancy payment. In or around this time a position similar to the claimant's (but full-time) was advertised in a newspaper on 29 September 2011. The claimant enquired about this position from the company, as an alternative to redundancy but he was told that he did not qualify for the position as he did not have a security license.

The claimant continued in the employment for some weeks until he was again called to a meeting in the office and asked to accept an enhanced redundancy payment. In addition the claimant was informed that it was the company's intention to change his working pattern. The 24 hours he worked would be distributed over a five day period going forward.

For the claimant this meant that he would no longer be eligible to receive a social welfare payment. The claimant felt that he had to accept the redundancy package offered but he accepted it on the basis that there was no full-time position available for him.

Subsequently, a full-time position with the company was advertised on 8 November 2011 and at a meeting was held on 23 November 2011 with the claimant and the CEO. The claimant stated that he wished to apply for the advertised position. He was informed by the CEO that if he did apply the redundancy payment offered to him would be revoked and in addition there was no guarantee that he would be successful in securing the advertised position. The meeting became heated. Following a break in the meeting the claimant accepted the redundancy payment as he felt he was being “brow-beaten” out of his position in the company. The employment concluded on that date.

The claimant does not believe that a genuine redundancy situation existed in relation to his position as it was immediately filled by another person. In addition two further positions were filled by the company in or around that time. The claimant gave evidence pertaining to loss.

Determination:

Based on the uncontested evidence of the claimant the Tribunal is satisfied that a genuine redundancy situation did not exist in relation to the claimant’s position and finds that the termination of the claimant’s employment constitutes an unfair dismissal. In considering the amount of compensation to be awarded the Tribunal notes that the company entered into liquidation on 26 September 2012. The Tribunal is also cognisant of the fact that the claimant received a redundancy payment and in those circumstances awards the claimant the sum of €6,936 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)