

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NOS

Employee – *claimant*

UD1508/2008

RP1356/2008

WT614/2008

against

Employer – *respondent*

UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. N. O'Carroll – Kelly BL

Members: Mr. A. O'Mara
Mr. S. O'Donnell

heard this appeal at Dublin on 5 May 2009

Representation:

Claimant: Mr. Colm Hennessy BL instructed by Ms. Madeleine Millar of
Feeney-Millar & Company Solicitors, 2 College View, Main Street,
Tallaght, Dublin 24

Respondent: Mr. John Doyle of Dillon Eustace,
33 Sir John Rogerson's Quay, Dublin 2

The determination of the Tribunal was as follows:

The claim under the Organisation of Working Time Act 1997 was withdrawn.

Respondent's Case

The finance manager gave evidence. The respondent's business is selling mobile phone credit from vending machines. The claimant came to the respondent under a transfer of undertaking when two companies merged in 2006. The combined companies remained loss making so redundancies had to be considered. The two merged companies used different software to do the same thing. A decision was made to use one software system based in Cork. The claimant was the IT administrator in Dublin. A sales person was let go. The Dublin administrator and the claimant were made redundant.

The claimant spent 90% of his time in the office in Dublin. His role was management of stock, operation of files and customer care. The Dublin office was shut. Two cash collection drivers remain in the Dublin area.

The decision to make the claimant redundant was made by the CEO following discussion with her and with the operations manager. The claimant was not offered an alternative position nor was he asked to work reduced hours. She thought it likely that he could have done work in Cork but that option was not considered. Redundancies were needed to cut costs.

The claimant was informed of the decision to make him redundant at a meeting on 23 May 2008 with the CEO and the operations manager. The finance manager did not attend the meeting but she prepared the letter that was given to the claimant after the meeting. She wrote to him again on 28 May 2008 in response to his request for background information to his redundancy.

The claimant did not sign an RP50 and did not receive a redundancy payment.

Claimant's Case

The claimant's background is mechanical engineering and electronics. He knew the original owner of the business. The vending machines were bought in Spain. The claimant speaks Spanish so he could resolve any issues. The machines all had to be converted from mechanical to electronic operation.

The claimant worked at servicing the machines and collecting money from them. At a meeting in Cork in September 2007 he was told that cost savings were required. He was also told that his territory would be South Dublin and Leinster. His job was always on the road. He never worked in IT. He serviced machines and did customer care. He sometimes worked 7 days a week until someone else took over customer care.

He noticed no decline in business. In fact 50 new machines were purchased from Eastern Europe and he was looking for sites for some of them. He was trained to use the new machines.

On 23 May 2008 he received a text message to bring his laptop to the office. He was informed that he was being made redundant. At the next meeting the following Monday he had to hand in phone, car and laptop. There was no discussion and no alternatives were under consideration.

The claimant accepted that the company was losing money. However in his view redundancies were not required while the business was being grown.

Determination

The Tribunal carefully considered the evidence adduced. There is a conflict of evidence over the role of the claimant. The Tribunal finds the claimant a credible witness and accepts his account of his role as being largely out servicing machines rather than office based. When making the decision to make the claimant redundant there were no objective selection criteria used. Also there was no discussion with the claimant of alternative courses of action.

The Tribunal finds that the claimant was unfairly dismissed. The claim under the Unfair Dismissals Acts, 1977 to 2005 succeeds, and having regard to all the circumstances the claimant is

warded €30,000.00.

As the claim under the Unfair Dismissals Acts succeeds the claim under the Redundancy Payment Acts, 1967 to 2007 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)