

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO.

Employee – **Claimant**

UD209/2009  
MN205/2009  
WT82/2009

against

Employer - **Respondent**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**  
**ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. P. McGrath B.L.

Members: Mr. G. McAuliffe  
Ms. P. Ni Sheaghda

heard this appeal at Carlow on 27 May 2009

**Representation:**

Claimant: Ms. Michelle Treacy, O’Flaherty & Brown Solicitors  
Greenville, Athy Road, Carlow

Respondent:  
Mr. Joseph Fitzpatrick, W.A Smithwick & Son Solicitors  
43 Parliament Street, Kilkenny

The determination of the Tribunal was as follows:

The respondent operates a convenience store, which had around sixteen employees at the time the claimant was employed as a sales assistant on 18 June 2007. The employment was uneventful until 26 May 2008 when the claimant was promoted to the position of manager following the resignation of the incumbent following maternity leave and the person who filled in during maternity leave deciding not to take on the position on a permanent basis. He continued to work on the shop floor before lunchtime. The claimant’s position, disputed by the respondent, is that when he took on the management role he sought assurances that should the promotion not work out he could return to his former position.

During 2008 the respondent’s trading position declined to a significant extent and reductions were made in the number of staff by natural attrition. By September 2008 there was a need to make further savings and it was decided that the position of manager could be made redundant as the most expensive member of staff. On 20 September 2008 the claimant met the directors away from

the business and he was told that his position, as the most expensive member of staff was to be made redundant. At this time the directors began to work in the business more and the managing director assumed the management responsibilities. The respondent's position, which was never put to the claimant until this hearing, was that they were unhappy with the claimant's attitude and performance as manager. The claimant's position is that, whilst accepting that the management position was gone, he sought to revert to a position on the shop floor. Whilst there were no full time positions available on the shop floor it is accepted that a total of some thirty hours per week was subsequently allocated to two part-time employees. At the same time as the claimant's position was declared redundant another part-time employee made the managing director aware that he was considering moving to full-time status with his other employer. To this end, on 22 September 2008, the respondent placed an advertisement in their shop window looking for full or part-time staff.

### **Determination:**

The Tribunal has carefully considered the evidence adduced in the course of this hearing. The employer was faced with a downturn in business, which is uncontested. Indeed the claimant fully accepted that his own salary as manager would be looked at in the event of any re-structuring or re-organisation in the workplace. When the employer met with the claimant to make the manager's position redundant the claimant was not surprised. However what only became clear after the event was that the employer was taking into consideration factors other than purely financial ones. It seems that the employer had listened to complaints from other members of staff about the claimant and about his interpersonal skills and management style. So, whilst the employer on the one hand declared the redundancy was a matter of economic necessity in fact disgruntled staff also persuaded him. At no point were the complaints put to the claimant and at no stage was he allowed defend himself or refute these allegations. In light of these extraneous considerations it seems that the employer failed to take an overall view of the workplace with the objective of seeing what would be the fairest thing to all its employees. The Tribunal does not doubt that the claimant would have returned to the shopfloor on a lesser salary rather than be faced with unemployment. There were many options open to the employer including short time and lay-off. Most bewildering of all was the fact that within 24 hours of making the claimant redundant the employer advertised a position in the shop window. The Tribunal fully accepts how this came to pass but understands the consternation anger and hurt caused to the claimant when he saw same. After some time the claimant got a reference from the employer and the Tribunal finds that the reference is ambiguous in the extreme and that the language used and how it might be interpreted would put off any potential employer.

In concluding the Tribunal finds that this was an unfair dismissal. The reasons given were not the reasons being relied upon. No consideration was given to alternative workplace arrangements where the claimant was eager to stay and the hours were required. The subsequently advertised post together with the ambiguous reference compounded the unfair treatment of the claimant. The Tribunal awards €15,000-00 under the Unfair Dismissals Acts, 1977 to 2007. The evidence having shown that the claimant received his entitlements under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 the claim under those Acts fails. No evidence having been adduced in this regard the claim under the Organisation Of Working Time Act, 1997 also fails

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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