

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE–**Claimant**

UD1988/2009
RP2240/2009
MN1872/2009
WT842/2009

against

EMPLOYER – **Respondent**

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. C. Corcoran B.L.

Members: Mr. M. Noone
Mr. N. Dowling

heard these claims at Dublin on 15 November 2010

Representation:

Claimant:

Mr. Kevin Callan B.L. instructed by Mr. John Finan,
Anthony Joyce & Co. Solicitors,
75 The Coombe, Dublin 8

Respondent:

Mr. Terry Griffin, Vincent T. Griffin Solicitor,
78 Aughrim Street, Dublin 7

The determination of the Tribunal was as follows:

The respondent is part of an international logistics organisation and its local operations constitute four divisions

- Deep Sea
- Airfreight
- International Road Transport
- Warehouse and Logistics

For some ten years before joining the respondent on 5 February 2007 the claimant was involved with the warehousing operations of a company whose operations were taken on by the respondent at that time. There was no written contract of employment. The claimant was employed as account manager/supervisor for the warehousing operation of the company he had previously worked for and as a warehouse operative in the Deep Sea section of the delivery warehouse.

It is common case that in early 2009 five major clients of the warehouse operation decided to withdraw their product from the respondent and that this brought about a redundancy situation within the respondent. Of the ten employees in the warehousing division the administrator was transferred to the Transport Office where the administrator had been selected for redundancy, the claimant and the two other account manager/supervisors were selected for redundancy, as was one of the four warehouse operatives. This left the manager, a senior account manager and three warehouse operatives. The senior account manager was made redundant in August 2009. One of the account managers was on the same pay as the claimant and the third account manager on the same pay as the operatives.

The Managing Director (MD) individually communicated these decisions on selection for redundancy to those affected on Friday 13 March 2009 and it is accepted that, whilst MD did not tell the previous person selected for redundancy that the claimant was to be selected for redundancy, it was not well handled and it was clear to the claimant before he met MD what his fate was. The claimant worked his period of notice up to 27 March 2009.

Determination:

The claimant was given no indication that his position was under consideration for redundancy and given no information about any selection criteria that were to be applied. MD told the Tribunal that, while the need was to save money, the level of pay was not relevant to the selection for redundancy. It is not clear to the Tribunal the basis on which the candidates were selected for redundancy. There is a lack of transparency in this process which amounts to a selection without any, or fair procedure. Accordingly, the Tribunal finds that the claimant was unfairly dismissed. Being cognisant that the claimant received a lump sum payment under the Redundancy Payments Acts, 1967 to 2007 the Tribunal awards €15,000-00 under the Unfair Dismissals Acts, 1977 to 2007.

The evidence having shown that the claimant received his entitlements in this regard, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 must fail.

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

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)