

EMPLOYMENT APPEALS TRIBUNAL

Claim Of:

Employee

Case No.

UD892/2006

RP451/2006

MN591/2006

against

Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr. B. Kealy
Mr J. Maher

heard this claim at Dublin on 7th March 2007

Representation:

Claimant: In person

Respondent: In person

The determination of the Tribunal was as follows:Respondent's Case:

The claimant was contacted by text message on his mobile phone on Sunday, 13 August 2006. He was asked to travel to Cork the following day, Monday, 14 August 2006. The claimant stated he could not travel to Cork for family reasons but he could travel to Wexford where he had been working prior to his holidays. Mr. M told the Tribunal that there were sites in Wexford but they were staffed.

The claimant made a comment to his supervisor Mr. G on 14 August 2006. Mr. G reported the comment to Mr. M. The claimant did not make contact with anyone after the 14 August 2006. The claimant's supervisor informed Mr. M that the claimant refused to go to Cork. The company heard nothing further from the claimant.

Answering questions from the Tribunal Mr. M stated that no one from the company telephoned the claimant after the 14 August 2006. The project in Cork is continuing until July 2007. The claimant could still be there if he had taken up the work there.

The construction industry holidays were the first two weeks in August. While the claimant was on holidays a crew was put into the Wexford site. The remainder of the claimant's colleagues are still working at the Cork site. Mr. M stated that the company's employees know the industry and they realise they might be moved to different locations.

Claimant's Case:

The claimant told the Tribunal that he had taken his holidays the first two weeks in August 2006. The claimant had been working in Wexford prior to his holidays. The claimant was the first person who had been based on the site in Wexford. On the last day of his holidays, 13 August 2006, he received a text message from Mr. G telling him to travel to Cork on the Monday. Mr. G told the claimant that Mr. M wanted him in Cork. The claimant told Mr. G that if it was on a short-term basis, such as two weeks, he might be able to arrange family issues. Mr. G was to pass this message on to Mr. M. The claimant heard nothing from the company during the next two days.

The claimant telephoned Mr. G who told him that Mr. M was meant to telephone him. The claimant telephoned Mr. M. Mr. M wanted the claimant in Cork the next day. He told the claimant it was not his problem to organise a crèche and the claimant could sit at home without pay. The claimant told the Tribunal that he had not refused to work down the country just in Cork. The claimant has commitments regarding his child every Tuesday. The discussion with Mr. M became heated. Mr. M hung up the telephone on the claimant.

The claimant telephoned Mr. G and told him about the conversation with Mr. M. The claimant asked Mr. G to please let him know if work continued in Wexford. The claimant has not heard from the company since then.

The claimant established loss.

Answering questions from the Tribunal the claimant stated he was first told on the 13/14 August 2006 that he was not going to be working on the site in Wexford. The claimant was told he would be working in Cork for at least 12 months. The claimant did not sign a contract with the company.

The claimant confirmed the site in Wexford had not closed. On the day the claimant waited to hear from the company an extra man was sent to the site. There were a further three men sent to the site after that. The site was only completed in December 2006.

Giving evidence a colleague of the claimant's, Mr. D, told the Tribunal he had worked on the site in Wexford. Three new people were sent down from Dublin while the claimant was at home unemployed and three new people were employed to the site in Wexford. The new staff arrived on the site around August/September 2006. Mr. D was working there until December 2006. The opening date for the shop on the site was 14 December 2006.

Giving evidence a former colleague of the claimant's, Mr. C, told the Tribunal he had been working on a site in Dublin. He was based on this site for five or six months. The respondent was meant to have two men on this site but Mr. C worked there on his own. Building site regulations state that two men must work together for safety reasons. For a short time he was given a person to help him for one or two days a week. This person was then removed from the site.

Determination:

Neither party contacted the other to clarify matters in relation to the claimant's employment. The Tribunal finds the claimant was unfairly dismissed. However, the Tribunal is of the view that the claimant contributed to his own dismissal.

Having considered all these facts as presented to the Tribunal, the Tribunal award the claimant one week's gross pay (€657.15), for his successful claim under the Unfair Dismissals Acts, 1977 to 2001 and having found him to be unfairly dismissed, the claim under the Redundancy Payments Acts, 1967 to 2003, fails.

The Tribunal also award the claimant his statutory entitlement under the Minimum Notice & Terms of Employment Acts, 1973 to 2001 and award him €1,314.30 (being the equivalent of two weeks gross pay).

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)