

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

UD361/2006

RP150/2006

MN207/2006

WT110/2006

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
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B.L.

Members: Mr. P. Pierson
Mr. J. Moore

heard this claim at Cavan on 30 March 2007

Representation:

Claimant:

In Person

Respondent:

Mr. Larry Burke, Burke, Hunt & Co. Solicitors
Elm Houses, Atbara, Cavan

The determination of the Tribunal was as follows:

The respondent's position was that the claimant was employed as a plasterer from 19 September 2003 until 2 May 2004 when he left to work on his own account. The claimant returned to the employment on 21 January 2005. Around Christmas 2005 the claimant had been told that plastering work was becoming scarce. The claimant worked for the respondent until Monday 13 March 2006 when he was told that, due to a shortage of work, there were only three days a week of work for him and that he would have to go on social welfare for the other two days a week. The claimant was the only plasterer employed by the respondent and after the claimant left a director of the respondent did the plastering work.

The claimant's position is that, whilst he accepted that there had been a break in his employment with the respondent, his employment had commenced in 2001 and in the next year he was let go, and went to work elsewhere for a period of five or six months. On 13 March the claimant felt that he was unable to meet his commitments on only three days a week and left the employment, considering himself dismissed. His contention was that non-Irish workers who performed plastering as well as block-laying took his position. He further contended that he was capable of block-laying.

Determination:

The Tribunal is satisfied that a redundancy situation obtained in the respondent on 13 March 2006, however evidence was given at the hearing by the claimant that he did other work besides plastering. It is the Tribunal's determination that as the staff who were retained had less service than the claimant he should not have been selected for redundancy before them as the other work that he did for the respondent still remained. It is further satisfied that the procedures adopted by the respondent in informing the claimant of the situation fell well short of those expected from a reasonable employer. Merely mentioning that plastering work was becoming scarce some three months earlier does not meet those standards. For these reasons the Tribunal finds that the claimant was unfairly dismissed and awards €5,000-00 under the Unfair Dismissals Acts, 1977 to 2001. As the Tribunal has found that this was an unfair dismissal a claim under the Redundancy Payments Acts, 1967 to 2003 does not arise, as they are mutually exclusive. The evidence having shown that the claimant was not given any notice the Tribunal awards €500-00, being one week's pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2001. The Tribunal being satisfied that the claimant received his entitlements under the Organisation of Working Time Act, 1997 the claim under that Act must fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)