

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD1262/2006
RP633/2006
MN829/2006

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: Ms. E. Daly B.L.
Members: Mr. F. Moloney
Ms. A. Moore

heard this claim at Dublin on 1st May 2007

Representation:

Claimant(s) : Mr. Pat Purcell B.L. instructed by Fiona Kelly Solicitor,
Matthews Solicitors, 53 Thomas Hand Street, Skerries, Co. Dublin

Respondent(s) : Mr. Breffni O'Neill, Construction Industry Federation, Canal Road, Dublin 6

The determination of the Tribunal was as follows:-

Preliminary Point:

At the outset there was a Preliminary point with regard to the claimant's service and his entitlement to seek redress under the Acts. The respondent submitted that the claimant returned to work after broken service and thereafter worked for ten months.

Claimant's Case:

The claimant gave evidence. He told the Tribunal that he had commenced employment with the respondent company in 1994 as an apprentice carpenter. In August 2004, he left employment and went to Australia for one year. Before he left he attended the office and spoke to the secretary. She made arrangements for his pay and tax rebate to be finalised at the end of 2004. He spoke to his employer who wished him the best for his future. The employer told him to make contact upon his return and his job was there for him when he came back. He did not receive a P45 on leaving but this was issued at the end of the year. The claimant returned to the country in September 2005. He telephoned the office and was told to attend for work. He did some work in the owner's house. There was some restructuring happening in the company. He had originally been employed under a contract of employment which was not renewed upon his return.

Under cross-examination, the claimant told the Tribunal that he had assumed that he was on a career break when he left the company but that he had not discussed the matter with his foreman or the owner of the company. While he was away he had kept in contact with his foreman on a personal basis and had telephoned him to inform him he was returning. Two weeks after he returned to the country he telephoned the office and was told to come back to work. He had originally worked in

the maintenance division of the company but did not return to work there. He worked on various sites and when the foreman was on leave, he went back to the maintenance division to provide cover. He was not aware of any other employee that had availed of a career break. He was not aware of any system in the company that provided for the facility.

Respondent's Case:

The owner gave evidence. He outlined the nature of his business to the Tribunal. The maintenance division of the company was to provide for a specific contract that the company had. It comprised of a set crew for a long period of time. The claimant had worked on this crew almost exclusively since he joined the company as an apprentice. The claimant approached him to tell him he was leaving the country for a year. On the day he was leaving, he attended the office and spoke to the owner. They had a general conversation and the owner told him that he could not guarantee him a position on his return but given his long history with the company, would endeavour to find him one.

There was no such thing as a career break in the company or the industry. The claimant had asked him not to issue a P45 for mortgage reasons. His P60 issued on the 31st December 2004 and the claimant was not put on the payroll in 2005. In September 2005, the foreman told him that the claimant had returned to the country. He had been replaced in the maintenance division but the owner was mindful of offering him a position as he had been a very good employee. He had no intention of placing the claimant back in the maintenance division as it was fully staffed. He re-employed the claimant on the 23rd October as a “snagging” carpenter in his own house until other employment could be sourced. He moved him around various sites as jobs came up.

Under cross-examination, the owner said that there had been over sixty staff employed at the company when the claimant left. When the claimant returned, the company was restructuring due to a downturn in work. The claimant left the company on the 25th August 2006.

Determination of Preliminary Point:

The Tribunal considered the evidence adduced and submissions made in this case and determines that there was no mutual agreement between the claimant and the owner regarding the arrangement of a career break. There was no agreement that the claimant's employment or service would continue in his absence. Accordingly, the Tribunal determines that the claimant does not have the requisite service to make a claim under the Unfair Dismissals Acts, 1977 to 2003. Therefore, the claim fails.

As the claimant had insufficient service with the respondent company, the appeal made under the Redundancy Payments Acts, 1967 to 2003 is dismissed.

No evidence was adduced regarding the claim made under the Minimum Notice and Terms of Employment Notice Acts, 1973 to 2001. The T1A form indicates that the claimant was given notice on the 21st August 2006 and the employment terminated on the 25th August 2006 (ie: one week). For both of these reasons, the claim made under the above Acts, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)