

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

UD1089/2006

against

RP565/2006

Employer

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. J. O'Leary B.L.
Mr. J. Reid
Ms. M. Mulcahy

heard these claims at Dublin on 19 April 2007

Representation:

Claimant: Maguire McClafferty Solicitors, 8 Ontario Terrace, Portobello Bridge, Dublin 6

Respondent: Mr Bernard Dunleavy BL, instructed by L.K. Shields Solicitors,
39/40 Upper Mount Street, Dublin 2

The determination of the Tribunal was as follows:-

Determination:

An application was made to the Tribunal on behalf of the respondent for a determination to require that the preliminary issue in this case be tried by the division of the Tribunal that will have sessin of the case prior to the substantive issue. The division of the Tribunal hearing this application will not be the same one that will have sessin of this case. One division of the Tribunal cannot make a decision that will bind another division of the Tribunal in any procedural matter. Therefore, it is not within the competence of this division of the Tribunal to bind the Tribunal having sessin of the case. Accordingly this application is refused, however the respondent may make a similar application to the Tribunal at the time of hearing.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Tadeusz Mlynarczyk, 15 Tower View, Trim, Co. Meath

UD1089/2006

against

RP565/2006

Andrew Mannion Structural Engineers Limited,
C/O Russell Brennan Keane, Athlone, Co. Westmeath

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2001 REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S.C.

Members: Mr. D. Winston
Mr. B. Byrne

heard these claims at Mullingar on 2 November 2007

Representation:

Claimant:

Ms. Rosemary Mallon B.L. instructed by Mr. Marcin Szulc,
Maguire McClafferty Solicitors, 8 Ontario Terrace,
Portobello Bridge, Dublin 6

Respondent:

Mr. Bernard Dunleavy B.L. instructed by Ms. Aoife Bradley,
L. K. Shields Solicitors, 39/40 Upper Mount Street, Dublin 2

The determination of the Tribunal was as follows:

There was a preliminary issue in this case in that the respondent contended that the claimant did not have the requisite service to pursue claims under either the Unfair Dismissals Acts, 1977 to 2001 or the Redundancy Payments Acts, 1967 to 2003.

The respondent employed the claimant from 27 June 2001 as a steel fixer. The employment was uneventful until early October 2005 when a colleague (AC) of the claimant was suspended. As a result of this suspension the claimant refused to work, saying "he no work, I no work". On 4 October 2005 the claimant, along with three colleagues, submitted his resignation to the respondent. In a letter of 5 October 2005 the managing director (MD) of the respondent accepted the claimant's resignation and further stated that AC had asked if the claimant could return to work as the claimant may have acted in haste. This letter proposed that the claimant meet MD on 10 October 2005 on which day the claimant, according to the respondent, was re-engaged by the respondent. Two of the claimant's three colleagues were also re-engaged at this time. AC is still an employee of the respondent.

It was submitted on behalf of the respondent that, by resigning on 4 October 2005, the claimant broke

his continuity of service such that when his position was made redundant and he was dismissed on 20 July 2006 he had neither the requisite one years service to make a claim under the Unfair Dismissals Acts, 1977 to 2001 nor the two years service to be eligible for a lump sum payment under the Redundancy Payments Acts, 1967 to 2003.

It was submitted on behalf of the claimant that, whilst the claimant had not used the word “strike” to describe his actions, and those of his colleagues on 4 October 2005, their actions did meet the definition of strike as found in the Redundancy Payments Acts, 1967 to 2003 and that therefore continuity was preserved.

Determination:

Section 6 of the Redundancy Payments Acts, 1967 contains the following definition.....

“Strike” means the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other employees in compelling their employer or any person or body of persons employed, to accept or not to accept terms or conditions of or affecting employment.

The Tribunal is satisfied that the actions of the claimant and his colleagues on 4 October 2005 fall under that definition. Under rule 5 (1) (c) of the third schedule of that Act a strike does not break continuity “whether or not notice of termination of the contract of employment has been given”. Accordingly the Tribunal finds that the claimant had the requisite service.

Following the determination of the preliminary point the claim under the Unfair Dismissals Acts, 1977 to 2001 was withdrawn and the respondent conceded the claim under the Redundancy Payments Acts, 1967 to 2003. Accordingly the Tribunal finds that the claimant is entitled to a redundancy payment based on the following criteria.

Date of Birth	18 August 1968
Employment commenced	27 June 2001
Employment ended	20 July 2006
Gross weekly pay	€501-20

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)