

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD154/2008
MN150/2008

Against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr R. Murphy
Mr. S. O'Donnell

heard this claim at Dublin on 27th May 2008

Representation:

Claimant(s) :

In Person

Respondent(s) :

In person

The determination of the Tribunal was as follows:-

Preliminary issue

At the outset a question was raised by the respondent as to the Tribunal's jurisdiction to hear the case. It was claimed that the claimant did not have continuity of service required under the Unfair Dismissal Acts to make a claim. The Tribunal considered the evidence on the question of jurisdiction and is satisfied that the claimant had continuous service of more than one year thus allowing him make a valid claim under the Act.

Respondents Case

The witness for the respondent was the owner and director of the company. He gave evidence that the claimant had left his employment with the company for a period of 7 weeks from the 3rd September 2007 until the 26th October 2007. He was paid holiday pay for 3 weeks approximately during this period. The claimant's supervisor had tried to contact him after the 3 week holiday period had expired but was unable to do so. He had spoken with a person who was sharing accommodation with the claimant and was told that the claimant had returned home.

The witness went on to give evidence that the claimant contacted his supervisor on his return and returned to work for the company on the 26th October 2007. He worked for one week and was then informed by his supervisor that there was no more work available and his employment finished on the 30th October 2007.

When asked, the witness replied that there was no discussion between himself and the supervisor concerning the claimant's departure from employment and he could not say if the claimant had been dismissed. It was entirely the supervisor's decision as he had no direct contact with the claimant.

Claimants Case

The claimant gave evidence that he worked for his employer from the 26th June 2006 until the 30th October 2007. He worked on the same construction site and reported to the same operations manager for the duration of his employment. He returned to his home country on holidays on the 6th September 2007 for a period of 3 weeks. During his holidays he fell ill and did not return to Ireland until the 24th October 2007. He had informed his employer of his illness by telephone and was absent for a total of 7 weeks.

On his return to Ireland the claimant contacted his supervisor seeking a return to work. His supervisor acceded to his request and the claimant returned to work. He worked for one week and discovered that his name was not on the roster for the following week. He asked his supervisor about this and was told that there was no more work available for him. He contacted his supervisor on two more occasions by telephone and was told to stop ringing as there was no work available. He did not receive any notice of his dismissal.

The claimant sought his P45 on three occasions from his employer and eventually received it in January 2007. He was unemployed from November 2007 until the 25th January 2008. His wages in his new employment are similar to that in his previous employment.

Determination

Based on all the evidence produced before the Tribunal the Tribunal is satisfied that the claimant was unfairly dismissed and accordingly awards the sum of €1400.00 under the Unfair Dismissal Acts 1977 to 2001. The Tribunal also awards the claimant a sum of €549.00 being one week's pay under the Minimum Notice and Terms of Employment Acts 1973 to 2001.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

