

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO.

Employee  
RP113/2008  
against

UD130/2008

Employer

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. M. Forde  
Mr. D. McEvoy

heard this claim at Cork on 2nd September 2008

**Representation:**

Claimant: Mr. Daniel Snihur, Independent Workers Union, 55 North Main Street, Cork

Respondent: Mr. Conor O'Connell, Construction Industry Federation, Construction House  
4 Eastgate Avenue, Little Island, Cork

The determination of the Tribunal was as follows:

**Respondent's case:**

The claimant's service was broken. He left on 30 December 2006, and began again on 29 January 2007. The Unfair Dismissal claim is too late, and is out of time.

The Production Manager (FM), who has since left the company, gave evidence that there was a downturn in September 2006 and they had to reduce the workforce. Normal procedure was last in first out, but they decided to ask did any employees want to leave. The claimant said that he did. It was emphasized to him that the P45 would be issued and his employment terminated, but that if things picked up, they would ask him to re-join the company. Work became available after Christmas and the claimant asked to return. Downsizing again became necessary in April 2007, and last in first out method was chosen for redundancy of employees, so the claimant was made redundant in April 2007. He said that the claimant asked to leave a few days before he left, and he was told that he was being made redundant. He knew that his employment was being terminated, but that if things changed, he would be offered a job again.

The General Manager (TC) gave evidence that the majority of the company's employees were from Eastern Europe. He said normally P45's would be issued a day or two after termination, and left for collection by the employees. There was an ongoing problem sending out P45's to the employees however, due to not always having forwarding addresses. The claimant was told that his P45 was available for collection, but it was not collected, so it remained in the office for some months. When the claimant was made redundant, the last in first out method was chosen, and as his date of commencement was January 2007, he was made redundant. A new contract was issued to the claimant on 29 January 2007 when he re-joined the company. He said that the claimant himself requested to leave in 2006. The Revenue Commissioners were aware that a P45 had been issued.

**Claimant's case:**

The claimant did not receive a P45, nor was he even verbally dismissed. There was a break in service, but the claimant was just told that there was not much work, so he went back to Poland for a few months.

The claimant gave evidence that he never got a P45 from the Respondent. He said that when he left he was told that it was unpaid leave, and that he would have his job when he came back. He heard that the company was downsizing, and he approached them because he had family problems that had to be addressed back in Poland. He said the Polish supervisor in Ireland rang him subsequently to come back, so he went back to work on a new contract doing different work. He said the first time he saw his P45 was at the Rights Commissioner hearing.

**Determination:**

No evidence was given by either side that a dismissal took place, in fact the claim made under the Unfair Dismissals Acts, 1977 to 2001, is out of time.

Both sides accept that it is a redundancy issue, and it is the view of the Tribunal that the evidence showed there was a break in service, which means that the claimant does not have sufficient service to qualify for a statutory redundancy payment.

Therefore, his claim under the Redundancy Payments Acts, 1967 to 2003, fails.

And, as claims for redundancy and Unfair Dismissal are mutually exclusive, his claim under the Unfair Dismissals Acts, 1977 to 2001, automatically falls.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

