

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

RP1013/2008
UD1179/2008
MN1088/2008
WT 482/2008

Against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
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. P. Woods

heard this claim at Dublin on 10th February 2009

Representation:

Claimant(s): Mr. Blazej Nowak, Emigrant Advice Centre, 19 Talbot Street,
Dublin 1

Respondent(s): XXXX

The determination of the Tribunal was as follows:-

At the outset of the case the claim under the Organisation of Working Time Act 1997 was withdrawn.

Claimant's Case

The claimant told the Tribunal that his former girlfriend called him after 10a.m. on 1 September 2008 and told him that he was dismissed. He went to the canteen where he collapsed and he was taken to hospital where he spent six to eight hours. He was on sick leave for two weeks and BA the MD told him he would contact him if work was available. After September 2008 the claimant reported to the workshop on three or four occasions, as he wanted to sort the issue of his sick leave and P45. The MD spoke to him and on another occasion the MD's daughter CA spoke to him. He was not told he was dismissed from his employment, he had a letter that his former girlfriend

had given to him. He received a letter dated 1 September 2008 on the 3/4 September 2008. He did not ask for a redundancy payment and he asked for a P45. He was told if he did not complain again that the respondent would give him all outstanding payments and that he could get his social welfare payment. At that time he had nothing to live on.

In cross-examination he stated that he accepted that he did not speak to the MD about terminating his employment. On occasion he spoke to the MD in the office and on other occasions they spoke in the canteen about his employment situation. The claimant received a letter from his former girlfriend that his employment was terminated. He told other employees that his employment was terminated based on the letter of 1 September 2008. At this point it was clear that he was not wanted in the respondent. When he returned to Poland he received all his documents. He requested his P45 before Christmas. He stated that he was asked to sign paperwork under pressure.

In answer to questions from the Tribunal he stated that he returned to Poland on 15 October 2008. He did not change his Irish address and he left the country. His landlord rented the premises that he stayed in to another tenant. It was possible that the documents were sent to him but no one signed for it. The claimant stated that he never had any health problems prior to collapsing on site.

He asked the MD's daughter CA for his P45 as he needed to claim social welfare benefit as he had nothing to live on. The first time that he requested his P45 he was told everything was ready and the second occasion he was informed if he signed the documents that he would receive all his paperwork. He read the document but he was not allowed to take it out of the office. As far as he could recall the document outlined that he had no claims against the respondent. The letter of 1 September 2008 was torn up when the claimant received it. He did not know how his former girlfriend came into possession of the letter.

Respondent's Case

CA for the respondent told the Tribunal that at no stage did she give the claimant notice to terminate his employment. On 1 September 2008 the claimant reported for work and requested to speak to the MD. She told him that the MD was not in the office and he insisted on waiting to speak to the MD. The claimant told her that he wanted to terminate his employment and he did not want to work for the respondent anymore. She asked the claimant if she could issue a P45 and he replied yes and the claimant did not speak to the MD on this occasion. At no stage did she hand a letter of termination to the claimant and the claimant stormed out of the office.

In cross-examination she agreed that her signature was on a letter dated 1 September 2008. The claimant finished work on 3 September 2008. The claimant handed in his notice on 9 September 2008 and he spoke to her. She prepared a P45 for the claimant when he gave in his notice. She stated that she did not see the claimant come to the office to collect it.

In answer to questions from the Tribunal she stated she was told to write a letter of termination addressed to the claimant but that she ripped it up and put it in the bin. The claimant was in breach of health and safety on 29 August 2008 and the MD would have dealt with this.

The second witness for the respondent the financial controller PR told the Tribunal that he did not see CA issue a letter to the claimant terminating his employment. CA issued numerous letters on behalf of the respondent. He clearly remembered the claimant having a conversation with CA about terminating his employment. A large volume of paper was shredded in the office and the claimant's girlfriend emptied the bins daily.

In cross-examination he stated that ninety per cent of the respondent's work was subcontracted. Approximately thirty-five staff out of a staff of one hundred and ten were made redundant between September 2008 and February 2009. Staff have been made redundant in the last three to four months due to the downturn in the economy. He witnessed the conversation that the claimant had with CA that he did not wish to work for the respondent.

In answer to questions from the Tribunal the financial controller stated that the MD made the decision to make staff redundant. It was difficult to say had the claimant remained in employment if he would have been one of the thirty-five staff who were made redundant.

The third witness for the respondent the MD, BA told the Tribunal that at no stage was the claimant given his notice. He had not intended to terminate the claimant's employment. The reason that he changed his mind about the letter of 1 September 2008 whereby the claimant was given two weeks notice that his employment was terminated was that he did not have anyone to go on site. The letter was retrieved from a bin by a cleaning lady and sellotaped together. The claimant was in serious breach of Health and Safety requirements on 29 August 2008 and this was brought to his attention at a site meeting. The claimant had two verbal warnings on file for being in breach of health and safety. The MD stated that he was a fair employer and he has in excess of seventy employees.

In cross-examination the MD stated that he was not one hundred per cent sure if the claimant reported for work on 8 September. The site foreman told the claimant to report for work but the MD did not know what day he was told he had to report to the office. There was no dispute over the claimant's wages and he paid the claimant his wages in full. It was compulsory to sign in.

Determination

At the outset of the hearing the claim under the Organisation of Working Time Act, 1997 was withdrawn and no award is being made by the Tribunal under this Act.

It was accepted by all parties that the claimant requested his P45 and he was not made redundant, therefore his claim under the Redundancy Payments Acts, 1967 to 2003 fails.

The claimant terminated his own employment and left of his own accord and his claim under the Unfair Dismissals Acts, 1977 to 2001 fails. His claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

