

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

RP370/2007

UD705/2007

MN569/2007

against
Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney BL

Members: Mr. J. Redmond
Dr. A. Clune

heard this claim at Galway on 17th September 2008

Representation:

Claimant(s) : Mr. John F Flannery, John F. Flannery & Associates, 4 Fr. Griffin Road, Galway

Respondent(s) : Ms. Kate Kennedy BL instructed by:
Ms. Sinead Curtis, Kennedy Fitzgerald, Solicitors, The Waterfront, Bridge Street,
Galway

The determination of the Tribunal was as follows:-

At the outset the claim under the Redundancy Payments Acts, 1967 to 2003 was withdrawn.

Respondent's Case:

An employee gave evidence for the respondent. She stated that the claimant had been out on sick leave for a period of ten months.

In February 2006 the claimant had an operation for varicous veins. Medical certificates had been submitted to the office for the first month then they were submitted to the site office. In December 2006 the claimant informed the witness that he was returning to work. She told him that he would need a medical certificate from his doctor to state his was fit to return.

After the Christmas break management did a review of all staff. The claimant's position had been held open for him for a period of ten months. No medical certificate was received by the respondent to state the claimant was fit to return to work. Management decided to let the claimant go and his P45 was issued in early January 2007. The witness received a call from the claimant when he received a letter of his termination and his P45. Two weeks after he had received the letter he gave the witness two medical certificates telling her that that was him "up to date".

On cross-examination she said that the claimant did not have a contract of employment. She stated that no letters were sent to the claimant while on sick leave to ask about his well-being. She was not aware that the claimant had spoken to someone in the site office on January 9th 2007 telling them he was returning to work the following day and would need a lift. No answer was given when put to her that the claimant's medical certificate covered him till January 12th 2007 and his P45 was sent out on January 9th 2007. She explained that she had received a call from the claimant two weeks after receiving his P45 asking about redundancy, she told him she was not sure about it and would check it out.

She explained that she had told the respondent that the claimant had indicated his intention to return to work. She stated that staff levels were reviewed on a yearly basis.

The Director of the respondent gave evidence. He did not believe he was involved in issuing the claimant's P45 or "make the call" to dismiss the claimant. He had written the letter of March 7th 2007 informing him of the reason he was dismissed and that he was not entitled to a redundancy payment. The Managing Director made the decision to dismiss. He was aware of the conversation in December of the claimant's intention to return to work.

The Managing Director gave evidence. He explained that a review of all staff was made in January 2007. He came to light that the claimant had been absent on sick leave for a period of ten months. Other staff had been paid overtime to cover the claimant's work and it could not continue. He felt that the claimant's position could not be held open any longer and they had a commitment to clients to get work finished. He was unaware of the conversation between the claimant and a colleague on January 9th 2007. He told the respondent's first witness to arrange the claimant's P45. There was no alternative employment available on site for the claimant.

On cross-examination he explained that the person the claimant had allegedly spoken to on January 9th 2007 was a buyer for the respondent. He explained that the respondent's second witness and he carried out the staff review. He made the decision to dismiss the claimant.

When asked had he instructed anyone to talk to the claimant to ascertain when he was to return to work or if he had been told that his job would be terminated, he replied that he had kept the position open for ten months. He said that the claimant had been a good worker and would hire him again. He could not recall if any other staff were let go at the same time. He refuted that the respondent's first witness had informed him of the claimant's intention to return to work.

Claimant's Case:

The claimant gave evidence. He explained that he had been absent from work for ten months as both legs had been operated on separate occasions. He had attended casualty for a period of six months beforehand.

In December 2006 he handed a medical certificate to the respondent's first witness informing her that he was hoping to return to work. In January 2007 he attended the site and spoke to one of his colleagues in the canteen. He handed this person a medical certificate and informed him that he intended to return to work the following Tuesday and if anyone was passing where he lived would they pick him up.

Two days later he received his P45 and contacted the respondent's first witness to ask why he had been sent it. She told him that it was up to management. The last contact he had was the letter of March 7th 2007.

He gave evidence of loss. He explained that he had received a disability payment until February 24th 2007 and then a job seekers allowance. He is currently on a back to work scheme.

On cross-examination he said that he had not been asked for a certificate to return to work. He explained that his doctor had told him he could return to work when he felt he could. He said he would not have given the respondent's first witness two last medical certificates. He said that he enquired about a redundancy payment some weeks after his dismissal.

Determination:

Having heard the evidence adduced by both parties in the case the Tribunal finds that the respondent had been procedurally unfair in dismissing the claimant.

Taking all circumstances into account the Tribunal awards the claimant €15,000.00 under the Unfair Dismissals Acts, 1977 to 2001. As dismissal by reason of redundancy is fair it follows that the claimant cannot succeed under the Redundancy Payments Acts 1967 to 2003, therefore the appeal under these Acts fail.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 is allowed and the claimant is awarded €2468.00 as compensation for four weeks' notice entitlement.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)