

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee
- claimant

CASE NO.
RP1136/2008
UD1323/2008
WT544/2008
MN1227/2008

Against

Employer - respondent

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: Mr. T. Ryan

Members: Mr R. Murphy
Ms. E. Brezina

heard this claim at Dublin on 23rd March 2009

Representation:

Claimant(s) : Mr. Brendan Liddy, Hughes & Liddy, Solicitors, 2 Upper
Fitzwilliam Street, Dublin 2

Respondent(s): Mr. Joe Bolger, ESA Consultants, The Novum Building, Clonsaugh Industrial
Estate, Dublin 17

The determination of the Tribunal was as follows:-

Preliminary Point

The claim under the Redundancy Payments Acts 1967 to 2003 was withdrawn on the day of the hearing.

Respondent's Case

The first witness for the respondent gave evidence that he is the Managing Director of the company. The company employed approximately 25 people on a building site in Saggart, Co. Kildare including the claimant who was employed as a scaffolder on that site. In July 2008 the company made 7 or 8 employees redundant including the claimant who was made redundant as there was no work for him as a scaffolder. The company had 3 scaffolders on site and each one was dismissed as the company had no more work for scaffolders. The claimant was the last scaffolder to be dismissed and none of them has since been replaced. Work on the site has now completely finished. The claimant at one stage acted as a safety representative on site but was replaced in this role by another employee as he had been out sick for a number of months. The role of safety representative is unpaid. A redundancy cheque issued to the claimant which was accepted and cashed.

The next witness gave evidence that he is employed as a contracts manager for the company and was involved in the day to day running of the building site. On the 8 July 2008 he informed the claimant that the company had no more scaffolding work available and he would be made redundant on the 18 July 2008. The claimant's redundancy form (RP50) was made available to him on the 18 July 2008 but he refused to sign it as he claimed he was being unfairly selected for redundancy. He did not indicate to the witness that he was going to appeal the decision to make him redundant.

Claimant's Case

The claimant gave direct evidence that he was employed as a scaffolder by the respondent company. He worked on a building site in Saggart, Co. Kildare and also worked in Celbridge on occasions. In June 2008 the contracts manager told him that there were going to be redundancies in general, but did not specify that he (the claimant) would be made redundant. On the 10 July 2008 the contracts manager then told him that he was going to be made redundant within a fortnight. Scaffolding which he had erected remained in place when he was made redundant. The witness replied that he wanted to appeal the decision and was told that he should contact the respondent's representative. In September 2008 he and his trade union representative met with the respondent's representative and were told that he was selected for redundancy as the company had no more scaffolding work available.

The witness gave further evidence that there was a collective redundancy situation but no negotiations took place and procedures for settling grievances as per the Registered Employment Agreement were not followed. He did not receive his correct rate of pay for a scaffolder as stipulated by the Registered Employment Agreement and he worked an average of 46 hours per week. He lodged his redundancy cheque to his bank account because the company owed him money.

In reply to questions from the Tribunal he confirmed that it would have taken approximately one day to disassemble the scaffolding that remained in place when he was made redundant. He agreed that in his capacity as a safety representative he did not object to working excessive hours.

Determination

The Tribunal having heard all the evidence is satisfied that a genuine redundancy situation existed and the claimant was not unfairly selected for redundancy. Accordingly the claim under the Unfair Dismissals Acts 1977 to 2001 fails. The Tribunal finds that the claimant is entitled to his notice

under the Minimum Notice and Terms of Employment Acts 1973 to 2001 and awards the claimant the sum of €1785.96 being the equivalent of two weeks pay under this Act.

Furthermore the Tribunal determines that it has no jurisdiction to deal with the issues raised concerning the claimant's rate of pay under the Organisation of Working Time Act 1997 and accordingly dismisses the claim.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

