

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

- *claimant*

CASE NO.

RP426/2008

UD526/2008

MN1437/200 8

against

Employer

- *respondent*

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: Mr D. Mahon BL

Members: Mr. L. Tobin
Mr. S. O'Donnell

heard this claim at Dublin on 2nd October 2008
and 11th December 2008

Representation:

Claimant(s) : Mr. Maurice Leahy, Maurice Leahy Wade & Co., Solicitors, Archway House,
The Plaza, Swords, Co. Dublin

Respondent(s) : Mr Tadhg O'Halloran, 1 Kilcloon Lawns, Kilcloon, Co. Meath

The determination of the Tribunal was as follows:-

Respondent's Case:

The Electrical Supervisor / Contracts Manager gave evidence. He was the claimant's supervisor for 4 years when the claimant was employed as an apprentice electrician.

On January 9th 2008 the witness told the Tribunal that the claimant completed his apprenticeship having completed phase 7 of his apprenticeship, which was a list of 8 assessments of which he had to complete 4. Between December 17th and 18th the witness signed off on 6 assessments the claimant had completed within the workplace.

He spoke to the claimant on January 9th 2008 and informed him that he had qualified as an electrician and that his employment was terminated but that he had located alternative employment for him. The witness explained that this was normal practice to terminate apprentices once they had qualified. They

could then re-apply for a position with the company if they so wished. The claimant thanked him and said that he would accept the new job.

When asked by the Tribunal he stated that the company had 40/45 staff at the time. 25 of these were qualified electricians. He also stated that, at that time, there were no vacancies.

On cross-examination he stated that when he completed the claimant's phase 7 schedule he gave it to the office administrator and dated it. He explained that phase 7 was completed after phase 6, an exam, was completed. The claimant had sat phase 6 in July 2007 but had to repeat one section of it in order to pass the phase.

A letter dated March 19th 2008 from FÁS was shown to the witness, which stated that the claimant had passed phase 7 of his apprenticeship. He was unsure when the claimant's phase 7 schedule was sent to FÁS. A letter dated January 24th 2008 from FÁS was shown to the witness stating the claimant had successfully completed phase 6 of his apprenticeship. The witness told the Tribunal that the claimant had previously been verbally informed that he had completed phase 6 and therefore he was able to complete phase 7. When asked, he stated that he was not sure when the claimant passed phase 6.

On re-direction he stated that he had shown the claimant what to do to carry out phase 7. He explained that some of the assessments in phase 7 were carried out before the claimant had completed phase 6. He stated that the respondent company was not downsizing at the time.

The Electrical Contractor that hired the claimant in January 2008 gave evidence. He had previously worked for the respondent company for 8 years. The claimant was hired as a qualified electrician on January 11th 2008.

In December 2007 the Company Secretary of the respondent company spoke to him. The witness told the Secretary that he would be very busy in January 2008 and would need to hire more electricians. The respondent's first witness contacted him in early January 2008 informing him the claimant was available. He said that it was not indicated to him that the claimant was not qualified. The claimant was given duties as a qualified electrician and the witness was pleased with his performance. When asked he said that he employed 6/7 apprentice electricians and had 16 employees in total. He stated that FÁS were not always timely in notifying people of results. At the time of the hearing he was waiting 2 months for an employee's phase 7 completion details. He said that he considered this employee as a qualified electrician.

He had not tested the claimant when hiring him as he came highly recommended. The claimant had been paid as a qualified electrician.

On cross-examination he stated that the claimant had told him 2-3 weeks after he was hired that he had a problem and was not qualified. The claimant was let go in July 2008 with 2 other employees due to a downturn in work. He stated that he did not think he had ever submitted a phase 7 schedule to FÁS before phase 6 had been completed. He explained that if an apprentice had completed phase 6 and was employed 4 years he had to complete phase 7. FÁS would not sign off an apprentice until phase 7 was completed.

On re-direction he stated that when he was assessing the claimant he relied on the respondent's Company Secretary as a reference. He had worked for the respondent for 7-8 years and was familiar with the training given there.

The Company Secretary of the respondent company gave evidence. He stated that the company had a staff of 72. 11 in administration, 21 qualified electricians and 40 apprentice electricians but these

numbers could fluctuate. When apprentices completed their apprenticeships they were let go within a month and could re-apply for a position if they wished. They hardly did and it was better to gain more experience elsewhere. He stated that he had to have a balance of 1st, 2nd, 3rd and 4th year apprentices.

He explained that the claimant had completed phase 6 in December 2007, he had told the office administrator that he was confident he had passed. He stated that FÁS were very slow issuing paperwork. He had received notification in the past stating employees had qualified months after they had left his employment. 3rd year apprentices sometimes got their results verbally. He had received verbal results from FÁS in the past. When asked, he stated that apprentices who had qualified were not let go until the company was notified of the results by FÁS but in this case the claimant had verbal confirmation.

A letter dated July 10th 2007 from FÁS was shown to the witness. It stated that the claimant's assessment records for phase 7 were overdue. He explained that when an apprentice passes phase 6 FÁS notify the employer about the completion of phase 7. He stated that the claimant re-sat 1 module of phase 6 in December 2007. When asked, in his opinion, what constituted the status of a qualified electrician, he replied that passing their exams but formal notification could take time months.

The claimant contacted him a week after he was let go. He wanted a redundancy payment, paid notice and told him that he was not qualified. He decided to pay him two weeks notice. The claimant was let go on January 9th 2008 but his P45 stated January 10th 2008. The claimant's union contacted the witness in March /April 2008 stating the claimant had been unfairly dismissed. He explained the situation to the union representative and this was the last time he heard from the union.

On January 14th or 15th 2008 he gave the claimant the opportunity to return to work for him but he said that he would stay where he was. He agreed that the respondent's second witness told him the claimant was not qualified and he told this witness that he had not received formal notification of the claimant's qualification until January 24th 2008.

On cross-examination he agreed that the letter dated July 10th 2007 from FÁS did not mention that the claimant had completed phase 6. He agreed that phase 7 should not be completed until phase 6 was completed. He said that phase 7 was assessed 6-8 months before phase 6 was completed.

When put to him he said that the claimant had rung him on January 11th 2008 to inform him that he was not qualified. When asked he said that he had not contacted FÁS to check if the claimant had qualified. He agreed that he had released an apprentice without formal notification of his qualification but he had offered the claimant his job back to try and rectify the situation. He stated that the company was not downsizing at the time the claimant and 2 other apprentices were let go as they had qualified.

On re-direction he stated that most electrical contractors let electricians go once they had qualified.

When asked by the Tribunal he said that when he had not received official notification from FÁS that the claimant had not qualified. They contacted FÁS and they were told they had to take the claimant back.

Claimant's Case:

On the **second** day of the hearing the claimant gave evidence. He stated that he was now a qualified electrician.

He explained that he had sat his phase 6 exams in July 2007 but failed one module. He repeated the module in December 2007. He said that he told the respondent's first witness that he was unsure

how he had done in his exams. On January 3rd 2008 he returned to work after the Christmas break but left that day on sick leave. He returned on January 9th 2008. He was informed by the respondent's first witness, his supervisor, that he was to be let go but that there was an offer of another job with another contractor. He told his supervisor that he had not received his results yet. The claimant said that he was under the impression that he had passed.

He went home and rang the other contractor; he agreed to start on Friday. He rang the college in Dundalk to get his results but was informed that they would not be ready for 2 weeks. He rang the Company Secretary and told him of his call to the college. The Secretary told him that the office had his results and he had passed. He again rang the college and was told the results would not be released for 2 weeks. He again rang the Secretary and told him of his 2nd call to the college and was told that the office had made a mistake that phase 7 had been signed off and he was not to worry.

Having asked for his 2 weeks minimum notice, he received it 2 weeks later. On January 11th 2008 he commenced employment with the new contractor. On January 27th 2008 he received a letter from FÁS to state he had passed phase 6. In early March 2008 he contacted FÁS about his phase 7 results. He was informed that he was still an apprentice and his results were not ready. He told them that the respondent had sent off his phase 7 schedule before Christmas 2007. He rang the respondent's Secretary and told him what FÁS had said. He was told that his phase 7 schedule had been re-sent to FÁS. On March 19th 2008 he received his letter from FÁS stating he had passed phase 7.

The claimant gave evidence of loss.

On cross-examination he stated that the respondent's first witness had organised new employment for him when he was let go from the respondent. When asked what advantage it was for the respondent to let him go, he replied that he was told he was qualified and therefore they would not have to pay him redundancy. He agreed that he had contacted his union about his dismissal; they contacted the respondent who was unwilling to pay redundancy and stated that the claimant would have to go to court to get it.

When asked he said that he was aware the respondent's first witness was assessing him for phase 7, the office administrator informed him. When asked by the Tribunal when he had installed an alarm system, as per the phase 7 schedule, he replied he had never done it.

Determination:

The members of the Tribunal very carefully considered all of the evidence adduced during the two day hearing. The Tribunal finds that the respondent technically breached the Redundancy Payments Acts, 1967 to 2003 when dismissing the claimant before he had completed his apprenticeship.

Therefore, the appeal under the Redundancy Payments Acts, 1967 to 2003 succeeds and the Tribunal awards the appellant a redundancy lump sum, which is to be calculated on the basis of the following criteria:

Date of Birth:	25 th September 1984
Date of Commencement:	26 th January 2003
Date of Termination:	10 th January 2008
Gross Pay:	€ 698.80

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

It should be noted that payments from the social insurance fund are limited to a maximum of €600-00 per week

The claims under the Unfair Dismissals Acts, 1977 to 2001 and the Minimum Notice and Terms of Employment Acts, 1973 to 2001 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)