

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

Employee  
–**Claimant**

UD1062/2008  
RP916/2008  
MN982/2008

against

Employer - **Respondent**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1967 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. P. McGrath B.L.

Members: Mr. T. O’Sullivan  
Mr. S. O’Donnell

heard this appeal at Mullingar on 30 April 2009

**Representation:**

Claimant: XXXX

Respondent:  
Mr. Breffni O’Neill, Construction Industry Federation,  
Construction House, Canal Road, Dublin 6W

The determination of the Tribunal was as follows:

The claimant worked for the respondent from 1 November 2004. The respondent’s position is that the claimant was at all times employed as a general operative; the claimant’s position is that he was a window installer. The employer’s position was further that on completion of the Christmas/New Year holidays the claimant broke his service when he refused to work on 7 January 2008 and would not return unless his demands for a pay rise were met. The claimant returned to work on 9 January 2008. The respondent’s position was that the claimant did not have the requisite twelve months continuous service in order to lodge a claim of unfair dismissal or, in the alternative, to qualify for alump sum payment under the Redundancy Payments Acts, 1967 to 2007.

The employment was uneventful until 24 July 2008 when the respondent placed the claimant, along with fifteen other employees, on temporary lay off. At least three other employees were kept on at this time to complete contracts, which were incomplete. The managing director (MD) of the respondent did not inform the claimant of his lay off directly but relayed the message through the

claimant's father, also an employee of the respondent. The respondent's position is that the three employees not laid off on 24 July 2008 had particular skills not possessed by the claimant. There was more work expected in October 2008 at which time the claimant was expected to be recalled. Around the time of the lay off the claimant and MD became involved in at least one agitated phone conversation. Whilst the claimant submitted no resignation in writing he did request his P45 in order to assist with his social welfare claim. The claimant never claimed redundancy by reason of 4 weeks lay off by returning his form RP9 to the respondent. The employer's position was that he had work available for the claimant two weeks after the hearing date at the Tribunal.

**Determination:**

The Tribunal is satisfied that the events of 7 January 2009 in no way amounted to a break in service on the part of the claimant. Accordingly the claimant does have the requisite service to mount claims under both the Unfair Dismissals Acts, 1977 to 2007 and the Redundancy Payments Acts, 1967 to 2007.

After the argument between the claimant and MD, following the issuing of the temporary lay off, MD assumed that the claimant had resigned without following up on the matter in any way at all. This amounted to a dismissal of the claimant, without any or fair procedure, such as to constitute an unfair dismissal. The Tribunal, having noted that the respondent has work available for claimant in a short time, orders that the claimant be reengaged from 21 May 2009. The period from 24 July 2008 until reengagement is to be considered as a period of lay off thereby preserving the claimant's continuity of employment. Having ordered that the claimant be reengaged a claim under the Minimum Notice and Terms of Employment Acts, 1967 to 2001 does not arise. Claims under the Unfair Dismissals Acts and the Redundancy Payments Acts being mutually exclusive a claim under the Redundancy Payments Acts, 1967 to 2007 does not arise.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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