

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

– *claimant*

CASE NO.

UD878/2008

MN806/2008

WT360/2008

RP749/2008

Against

Employer

- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. M. Forde
Ms. H. Kelleher

heard this claim at Cork on 5 March 2009

Representation:

Claimant: Mr. Jim Brooks of Collins Brooks & Associates, Solicitors,
6/7 Rossa Street, Clonakilty, Co. Cork

Respondent: Ms. Eileen Hayes of PJ Driscolls Solicitors.
41 South Main Street, Bandon, Co. Cork

The determination of the Tribunal was as follows: -

Respondent's Case:

The respondent is a sole trader. He started the business in 1997. The claimant started working for him in March 1998 and continued until March 2008.

In March 2008 work was quiet. Some weeks there was not 5 days work. When they finished a particular job the claimant came to him and said he had found a job. The respondent had no work for the claimant and did not object to him doing the job.

On 6 April 2008 the respondent met the claimant by chance and asked him when he would be available for work. The claimant told him he would be finishing the job on Monday. The respondent would have work for him then. The following Tuesday he phoned the claimant to ask him to come to work. The claimant had started on another job. The respondent felt let down.

He next heard from the claimant towards the end of June 08. The claimant was looking for work, then he asked about being made redundant. He met with his accountant and the claimant but no agreement was reached. When the claimant left he was not replaced.

Claimant's Case

The claimant gave evidence. He was in full time employment from 1998 with the respondent. Problems started early in 2008. There was a downturn and as a result work decreased. He went looking for bits to do. He got a job for two weeks, the respondent agreed to his doing the work.

After he met the respondent in April he expected a phone call from him the following Monday. When he did not hear from him he started on another job. Between March and June he did not work full time. He was always looking for bits and pieces.

Determination

There was a conflict of evidence and neither party adduced independent evidence to support his case. On balance the Tribunal finds that the circumstances surrounding the termination of the claimant's employment do not constitute a dismissal or a redundancy. The claims under the Unfair Dismissals Acts, 1977 to 2001 and under the Redundancy Payments Acts, 1967 to 2003 fail. In consequence the claims under the Minimum Notice and terms of Employment Acts, 1973 to 2001 and under the Organisation of Working Time Act, 1997 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)