

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

UD275/2009
MN272/2009
RP250/2009

Employee

UD276/2009
MN273/2009
WT113/2009
RP251/2009

- *claimants*

against

Employer

- *respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr F. Cunneen
Mr. P. Woods

heard this claim at Dublin on 24th July 2009

Representation:

Claimant: Mr. Blazej Nowak, Polish Consultancy Enterprise, 19 Talbot
Street, Dublin 1

Respondent: In person

**The claims under the Organisation of Working Time Act, 1997, and the Redundancy
Payments Acts, 1967 to 2007, were withdrawn during the hearing.**

Claimants' case:

The date on the P45s is 12 July 2008, but they were on unpaid leave until 20 August 2008. The claimants did not receive any notice.

The claimant (WS) gave evidence that he made a complaint to a Rights Commissioner because he did not have a written contract, he had not received his holiday pay, and was receiving a lower rate of pay than he was entitled to. On 12 July 2008 there was no more work so he was told to go on holiday. He was never paid for this holiday.

He rang his employer from Poland on 20 August 2008 and was told that there was no more work, and not to come back to Ireland. He said that he left his last address in Ireland on 15 July 2008, but did not inform his employer about this.

The claimant (PJ) gave evidence that his employer was cheating the employees. He was told by the respondent to go on holidays because there was no work. He was asked to sign a waiver document by the employer to the effect that he would make no more complaints against them. He refused to do this. He was also told that he was not entitled to holiday pay. He said that friends rang him to inform him that there was no more work available with the respondent.

Respondent's case:

The respondent (PK) gave evidence that the claimants would take many trips back to Poland, and would only give about a week's notice because they wanted to get the cheapest air tickets. Their claim that there was no work was ridiculous, as the company was particularly busy at the time and needed all the employees. He did not tell the claimants to go on holiday because he needed them for work.

After they made the complaints to the Rights Commissioner, he explained to them that there could be no more Saturday work, so WS got upset at this and said he would have to go. He did not recall any phone call from WS on 20 August 2008. He said that WS was a good worker, but too irregular, and the reason his employment ended was that he just failed to turn up for work. He said that he sent the P45 to WS's Portlaoise address, not realising that he had moved.

He denied that he had asked PJ to sign a waiver document. He said that the claimants never came back to work after 12 July 2008

Determination:

The Tribunal does not have jurisdiction to deal with the unfair dismissal claims, because the applications were lodged out of time. The Tribunal is not satisfied that the claimants were employed after 12 July 2008.

The Tribunal dealt only with the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005. There was a conflict of evidence given by the parties in this case. The Tribunal prefers the account given on behalf of the respondent.

The Tribunal accepts that the claimants' employment was somewhat unusual in that it was

punctuated by frequent trips to Poland. While the respondent did not object to this, it was inconvenient from time to time, given the high volume of work he had in 2008. The Tribunal believes that the claimants left the employment on 12 July 2008 of their own volition.

Accordingly, their claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

