

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee - claimant

CASE NO.
UD516/2009
RP537/2009
MN532/2009
WT227/2009

against
2 Employers
under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D Cagney BL

Members: Mr F Cunneen
Mr F Barry

heard this claim at Dublin on 19th May 2009

Representation:

Claimant: XXXX

Respondent: In person

The determination of the Tribunal was as follows:

Respondent's Case:

In 2008 the respondent found that demand for his business, a scaffolding company, was declining. He informed the staff, including the claimant, several times during the year that he couldn't guarantee full-time work. The respondent told the claimant that if he laid him off it would only be for a short period of time, as on previous occasions. The respondent contended that there were several periods in 2008 when the claimant was laid off. However, he could not explain why the payment records produced showed no break in payment to the claimant.

The respondent issued a P45 to the claimant on Friday 4th January 2008, but secured temporary work for the claimant immediately, and so, the claimant continued to work the following Monday.

The respondent contacted the claimant by phone on Saturday 13th September 2008 to tell him that there was no work. The respondent had asked the claimant to return to the yard on Friday afternoon 12th September 2008, but he did not appear. The respondent tried to contact the claimant several times but did not succeed until Saturday afternoon. The respondent contended that the claimant did not have continuous service and was not entitled to a redundancy payment. The respondent contended that the claimant was paid three weeks holiday pay.

The respondent later sent a text message to the claimant offering him temporary work, but the claimant refused it. In a later phone call, in response to receiving a letter from Fás, the claimant said he was only interested in fulltime work and that was why he wouldn't return. Two other

employees were paid a redundancy payment in November 2008, as they did not wish to work a three-day week or be on lay-off.

Claimant's Case:

The claimant stated that he was annoyed that the respondent had phoned him on a Saturday to tell him there was no more work. The claimant agreed he had been asked by the respondent to return to the yard on Friday evening and that he had not appeared. The claimant wanted fulltime work and contended that the respondent had only offered him a day's work after he was let go. The claimant agreed that he had been laid-off for periods in 2008. He accepted that he had received holiday pay for the summer holidays in 2008, though contended that he had only received two weeks pay for this.

Determination:

Having heard the evidence adduced the Tribunal finds that there was no break in the claimant's service. The Tribunal is satisfied that dismissal occurred on grounds of redundancy and that the claimant was entitled to notice. Therefore, the claim under the Unfair Dismissals Acts, 1977-2007, is dismissed. On the basis of the evidence the Tribunal is satisfied that the claimant received his holiday pay entitlement and therefore the claim under the Organisation of Working Time Act, 1997, is dismissed.

The Tribunal awards the claimant €2,800.00 in respect of four weeks notice under the Minimum Notice and Terms of Employment Acts, 1973 To 2005.

The Tribunal is satisfied that the claimant is entitled to a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2007, based on the following criteria:

Date of Birth:	12 th May 1963
Date of Commencement:	5 th September 2003
Date of Termination:	12 th September 2008
Gross Weekly Pay:	€700.00

It should be noted that a weekly ceiling of €600.00 applies to payments from the Social Insurance Fund. This award is made subject to the employee having been in insurable employment according to the Social Welfare Acts during the relevant period.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)