

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE – *claimant*

CASE NO.
RP1277/2009
UD1344/2009

MN12/2009
WT5/2009

EMPLOYEE - *claimant*

RP1348/2008
UD1360/2009
MN1442/2008
WT609/2008

against

3 EMPLOYERS - *respondents*

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: Ms N. O'Carroll-Kelly BL

Members: Mr. J. O'Neill
Mr F. Barry

heard this claim at Carlow on 4th June 2009
and 23rd September 2009

Representation:

Claimants: In person

Respondent: 1st named respondent in person
No appearance by or on behalf of the 2nd and 3rd named respondent.

The determination of the Tribunal was as follows:

Respondent's Case

The first named respondent gave direct sworn evidence. He had employed both named claimants in a business he had taken over from his father. He operated his business as a sole trader. In 2006 he obtained a contract to undertake work on a road in Carlow. He subcontracted some of the work to the second and third named respondent which is the same entity (hereinafter referred to as company B. At this stage his business was losing money so he started another business with company B. When they went to set up this business they could not obtain a C2 certificate, as his accounts were not up to date. He removed himself as a director from this business in May 2007, and became a foreman for company B. His own sole trader company had ceased trading at this stage.

His sole trading company had employed the two claimants. In early 2008 he gave the claimants P45s directly to company B, they were now the employees of this company. Before issuing the P45s he paid all holiday pay due to the claimants. He never informed the two claimants that he no longer employed them, as he thought the new employment measures was a short term gap. Company B took over the finishing of a project that the first named respondent had commenced. Company B was to take over the hire purchase of the machines he had as a sole trader, two diggers and a dumper. However the two of the Finance companies did not want to sign up company B. He sold one of the diggers and is still in possession of the other digger.

Claimants' Case

The second named claimant gave direct sworn evidence. He commenced employment with the first named respondent in February 2003. On the 19th September 2008, JA of company B informed him that there was no more work for him. He discovered that company B had employed him since March 2008 when their T2 was lodged. He thought he was employed by the first named respondent all along and had never been informed of the change of his employer. He was seeking his redundancy payment and he had not received any minimum notice when he was let go. He confirmed he was not owed any holiday pay.

The first named claimant commenced employment with the first named respondent in November 1998. He agreed with the evidence given by the second named claimant and informed the Tribunal his evidence would concur with this.

Determination

Having heard all of the evidence we are satisfied there was no transfer of undertaking between the first named respondent and the other named respondents. Both claimants stated during the course of the hearing that they had no claim against the first named respondent. The claimants also stated that they were not owed any holiday or overtime pay from the other named respondents.

Therefore the only award the Tribunal can make is under the Minimum Notice and Terms of Employment Acts 1973 – 2001. We award the first named claimant €796.24 which is equivalent to one weeks' pay under the Minimum Notice and Terms of Employment Acts 1973 – 2005. We award the second named claimant €703.68 which is equivalent to one weeks' pay under the

Minimum Notice and Terms of Employment Acts 1973 – 2005.

Their claims under the Redundancy Payments Acts 1967 – 2007, Unfair Dismissals Acts, 1977 to 2007 and Organisation and Working Time Act 1997 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)