

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:  
EMPLOYEE

- **claimant**

CASE NO.  
UD1481/2008  
MN1435/2008  
RP1337/2008

against

EMPLOYER

- **respondent**

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Mr D. Hegarty  
Mr K. O'Connor

heard this claim at Mallow on 30th July 2009

Representation:

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Claimant :

Mr. Frank Nyhan, Frank Nyhan & Associates, Solicitors,  
11 Market Square, (Opposite Courthouse), Mallow, Co. Cork

Respondent :

xxxxx

The determination of the Tribunal was as follows:-

**Respondent's case:**

The respondent ran a small shop where the claimant worked as sales assistant for ten years. In September 2007 he demolished the shop and during the period when he was re-building the premises he kept the claimant on and paid him his full wages. In February 2008 the new shop was ready and the process of fitting it out had started when the street was closed down with no access due to flood relief work being carried out. This process started on 4<sup>th</sup> April 2008. On 28<sup>th</sup> April 2008 the claimant was put on a three-day week and he was placed on temporary lay off on 20<sup>th</sup> June

2008. By letter dated 6<sup>th</sup> June 2008 he was told that the lay off would apply from 14<sup>th</sup> June 2008 and this date was brought forward by a week at the claimant's request in order to facilitate his sending a form to the Social Welfare office. The flood relief work was disastrous from a businesspoint of view as he was not told if the duration was to be three, six or nine months therefore he could not tell the claimant the length of the lay off period. On 24<sup>th</sup> July 2008 the claimant asked the respondent if he could re-draft the aforementioned letter and to omit the reference to "temporary layoff" and the respondent obliged.

The claimant took up alternative employment in September 2008 and verbally requested a redundancy payment on 4<sup>th</sup> October 2008. By way of letter dated 6<sup>th</sup> October 2008 the claimant was offered full time work for at least four months effective from 20<sup>th</sup> October 2008. When he was asked if he was coming back to work for the respondent the claimant stated that he was in a job with higher wages. The respondent stated that he did not have the finances to pay redundancy and that the claimant had left voluntarily. On 26<sup>th</sup> November 2008 he was made aware of the claims being lodged before the Tribunal. The claimant was paid the outstanding monies due. He did not apply in writing for the redundancy payment and the respondent did not dismiss the claimant.

### **Claimant's case:**

On the 7<sup>th</sup> June 2008 the claimant was told by the respondent that that he would be finishing work that evening. He had been on short time for three to four weeks at that stage. The claimant said he was going on holidays and the respondent said "you finishing". The letter dated 6<sup>th</sup> June 2008 in relation to temporary lay off he received either that day or the following day. He needed the P.45 and this he collected from the accountant. He looked for alternative employment and was in full time work by mid September 2008. In or around a month after starting in his new job the claimant rang the respondent and requested his redundancy payment and the response was that he did not have the funds to pay the claimant. The claimant stated that he would organise the paper work in relation to same. The next day i.e. 4<sup>th</sup> October 2008 he received a text message from the respondent offering him four months work and this was confirmed by letter of 6<sup>th</sup> October. There was no mention of this work the previous day when they had the discussion in relation to redundancy. When he met the respondent later that day on the street he told the claimant, "four months work today, forty years next week, who knows" He had no further conversation with the respondent.

In cross-examination the claimant stated that he was in full and permanent employment when he requested the redundancy payment.

### **Determination:**

The respondent had trading difficulties and the claimant was put on temporary lay off. On 6<sup>th</sup> July 2008 he understood that the respondent meant his job was gone. The Tribunal by majority decision, with Mr Hegarty dissenting is satisfied that a redundancy situation existed and the claimant is entitled to a redundancy lump sum under then Redundancy Payments Acts, 1967 to 2007 based on the following:

Date of Birth

15<sup>th</sup> April 1970

Date employment commenced	15 <sup>th</sup> March 1998
Date employment ended	07 <sup>th</sup> June 2008
Gross weekly pay	€356

Please note that this award is being made subject to the claimant having been in insurable employment during the relevant period.

The claimant was entitled to six weeks notice and was paid two weeks notice therefore he is in now due the balance of four weeks which amounts to €1,424 under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The claim under the Unfair Dismissals Acts, 1997 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

