

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO.
MN615/2009

against

EMPLOYER - respondent

Under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P O'Leary BL

Members: Mr J O'Neill
Mr O Nulty

heard this claim at Cavan on 30th October 2009

Representation:

Claimants(s): In person

Respondent(s): In person

The decision of the Tribunal was as follows:

The Appellant contended that he had been let go on 6th May 2006 and made his application to the Tribunal on 2nd March 2009. The Tribunal decided that it could only hear the claim brought under the Minimum Notice Acts.

Respondent's Case:

The managing director (MD) of the respondent company contended that the appellant had not been let go and that there was still work with the company.

The MD gave evidence that the appellant commenced his employment with the respondent company on the 10th February 1990, as a fitter helper and rigger. In November 2002 the appellant left the employment, as his wife was ill, and did not return until the 22nd November 2004. The MD had not dismissed the appellant during this time. The appellant worked until the end of 2005 and then took eight weeks off. He then worked for ten weeks ending on the 13th May 2006. The appellant did not return after this date. The MD did not know why the appellant was taking the time off and contended that there was still work for the appellant.

The MD explained that he normally informed employees of where they were to work via phone or

by visiting them on site. The MD couldn't say whether or not he had contacted the appellant after he left in May 2006. He had left on previous occasions and came back. The MD knew that work away from home would not suit the appellant.

The MD was contacted by the appellant at the beginning of 2008 and told him that he was looking for a redundancy payment. The MD asked the accountant about it, but the accountant said that it did not apply in that situation. The MD met the appellant after that in the Citizen's Information office in Navan, but there was no resolution on the matter. The appellant then asked for his P45, he had not requested it previously. The appellant did not ask for work.

During cross-examination the MD agreed that it was possible that some of the breaks were due to a shutdown in the cement factory that he was contracted to work at. However, he stated that these shutdowns were normally only once a year for a week and other employees had continuous work. The MD stated that he had not received any forms from Social Welfare concerning the appellant. The MD believed that the appellant would come back when he wanted to work. Only the appellant ceased working in May 2006, all other employees continued to work.

Appellant's Case:

The appellant commenced his employment on 6th February 1990. He was absent for approximately three years when his wife was diagnosed as terminally ill. The appellant agreed that there were other periods before May 2006 when he wasn't working. He contended that this was due to shutdowns in the cement factories that he worked in.

The appellant contended that on Saturday 6th May 2006 the job he was working on was coming to an end. The MD paid him by cheque the day before and told him that there was no more work until he had more work. The appellant heard nothing further and then asked for a redundancy payment six or seven months later, when he met him at a handball alley. He did not ask the MD for work when he saw him, he expected the MD to tell him when there was work available.

The appellant believed that another employee left after him due to a lack of work, though the MD contended that this particular employee had left the December prior. The appellant sought his P45 certificate, as he required it to claim a Social Welfare payment. He hadn't required it previously as he was on a widower's pension.

Determination:

The Tribunal finds that the appellant was put on lay-off as of the 13th May 2006. That situation did not change since the date of the lay-off. Therefore, there has been no dismissal, and, as there was no dismissal all claims must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)