

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE - **Appellant**

UD326/2009

against

RP329/2009

EMPLOYER -**Respondent**

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. Hayes B.L.

Members: Mr. D. Moore  
Mr. A. Butler

heard this appeal at Dublin on 3 September 2009

#### **Representation:**

Appellant:

Mr. Marcin Szulc, Maguire McClafferty Solicitors,  
8 Ontario Terrace, Portobello Bridge, Dublin 6

Respondent:

XXXX, Director of the Respondent

The determination of the Tribunal was as follows:

The claimant commenced employment in June 2004. His employment came to an end on 12 December 2008. He claims that he was dismissed by reason of redundancy but that it was not a genuine redundancy. It was claimed on behalf of the respondent that there was no dismissal and that the claimant voluntarily left its employment. The claimant had not been given any redundancy payment. Claims have been brought pursuant to the Redundancy Payments Acts, 1967 to 2007 and the Unfair Dismissals Acts, 1977 to 2007.

A T2 was lodged on the respondent's behalf. It was dated 14 April 2009. Contrary to the position adopted by the respondent at the hearing, the T2 said, *inter alia*;

“Due to the collapse of the construction industry we have been forced to shed jobs and because this employee did not wish to work under terms we unfortunately had to let him go.”

The position adopted by the respondent at the hearing before the Tribunal was that the claimant had

not been dismissed. Rather he resigned and asked to be furnished with a letter of dismissal so that he could make a Social Welfare claim. The respondent's position, in contradiction to that adopted in the T2, was that, while there were employees on short-time, there had been no redundancies.

The claimant told the Tribunal that on Friday, 27 November 2008, shortly before 4pm, he was asked by his manager to work the next day. He could not work on Saturdays because his wife did and he was required to mind their child. This was known by the respondent, a fact confirmed by AD, the contracts manager who gave evidence on the respondent's behalf.

The claimant had been diagnosed with diabetes in April 2008. This necessitated an initial hospitalisation, during which he was off work for about two weeks. Thereafter he missed one morning a month to allow for medical appointments. This did not unduly interfere with his work. The claimant told the Tribunal that it appeared to have a negative impact on his employer and his manager.

The claimant received a letter dated 28 November 2008. It was purported to be signed by the managing director, BA. It was disputed by BA that it was his signature on the letter. AD agreed that it did not appear to be BA's signature. However, it was contained in an envelope given by BA to AD to give to the claimant. The Tribunal accepts that the letter came from BA, whether or not it was in fact signed by him. The letter said:

“It is with regret that due to circumstances beyond our control and delay in securing future contract, we are left with no option but to terminate your employment. We are now issuing you with 2 weeks official notice. Should circumstances change in the near future we will be in contact with you. We would like to take that opportunity to thank you and to wish you well in the future.  
Yours sincerely,  
BA  
Managing Director.”

The claimant went to collect his P45 on 12 December 2008. This he was given. He was also presented with a letter to sign. He was told that this document was to confirm that he had received his P45 and all holiday pay due to him. He declined to sign the letter. The letter was not such an innocent confirmation. In fact, it said:

“This is to confirm that I, MG of BA Ltd hereby agree and accept that *I haveterminated my employment* with BA Limited having its registered office at IDACentre, Dublin 7 on the ..... Day of ..... 200..

I accept that I have no claims whatsoever arising from my employment under;

1. Redundancy payment act 1967-2003
2. The Minimum Notice and Terms of Employment Act 1973 2003;
3. Terms of Employment (Information) Act 1994;
4. Unfair Dismissal's Act 1977-2001;
5. Organisation of Working Time Act 1997;
6. Anti-Discrimination (pay) Act 1974;
7. Employment equality Act 1998;
8. Payment of Wages Act 1991;
9. The Protection of Employees (part-time) work 2001;

10. The Protection of Employees (fixed-term work) Act 2003;

I further confirm that I have no claims of whatsoever kind, be it under the above acts or in respect of any personal injuries against either my former employer and/or the directors.

Signed ;.....

Witnessed ;.....

Date ;.....” (sic). [Emphasis added by Tribunal]

It is obvious that these two documents are inconsistent.

The respondent sought to suggest that the company did not operate on Saturdays, presumably the implication being that the claimant could not, therefore, have been dismissed for that reason. However, this was contradicted by the respondent’s own witness who told the Tribunal that the company did operate at weekends.

The respondent also sought to suggest that the claimant was losing too much pay because of missing work due to his diabetes and that he would, therefore, be better off on Social Welfare, which is why he sought the letter that was provided. It should be noted that BA did not accept that the letter produced to the Tribunal was the letter given by him, although the content of both was, in essence, the same. However, evidence adduced by the respondent was to the effect that usually when the claimant was absent for his medical appointments he was left clocked-in. BA told the Tribunal that the claimant was always paid as per his clocked hours and that he never questioned the arrangement made between the claimant and his manager in this regard. On that basis, it would seem that any loss of earnings being suffered by the claimant from attending medical appointments was, therefore, minimal at best. This is particularly so given that the Tribunal accepts that he missed about one morning per month.

The Tribunal accepts that the claimant was dismissed by the respondent. He was not dismissed by reason of redundancy, although redundancy was initially used as an excuse. The Tribunal accepts that there was no fair reason for the claimant’s dismissal. Pursuant to his claim under the Unfair Dismissals Acts, 1977 to 2007, the Tribunal awards compensation in the amount of €22,500 as being just and equitable in the circumstances.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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