

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE - claimant

against

EMPLOYER - respondent

under

CASE NO.

UD469/2009

RP 479/2009

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

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 28th October 2009

Representation:

Claimant(s): Ms. Aoife Marrinan
Richard Grogan & Associates,
Solicitors, 16 & 17 College Green, Dublin 2

Respondent(s): Ms Muireann McEnery
Peninsula Business Services (Ireland) Limited
Unit 3 Ground Floor, Block S
East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:

Claimant's Case:

The claimant worked as a mechanic for the respondent company, from March 2005 until the 27th December 2008. In November 2008 the claimant's hours were reduced, but were increased again during December. He worked in the store during December. The appellant asked the managing director (MD) of the respondent company if there was work after Christmas and he was told to come in and check after the holidays.

The claimant came to the workplace in January 2009 and was told by MD that there was no work,

and that he would phone the claimant when he had work. The claimant did not receive a phone call from MD. The next time the claimant went to the workplace he was told that there was no work and given his P45.

During cross-examination the claimant agreed that he had spoken to MD about going into business with a friend of his, but disputed that he had said that he needed €4,000 to enter the partnership. The claimant also disputed that he had asked to work one day per week so that he could claim a Social Welfare allowance or that he was aggressive towards the accountant. The claimant contended that he had asked the company accountant to sign a social welfare claim form in November when his hours were reduced, not in January. The claimant agreed that he had completed a training course in October paid for by the respondent company.

The claimant contended that he only commenced employment with his friend in Dundalk in September 2009, as an employee and not as a partner, and that he had been claiming social welfare in the meantime.

Respondent's Case:

The accountant for the respondent company gave evidence that the claimant was the last employee to leave the company and that he had not been replaced. She stated that when the claimant commenced his employment in 2005 he was hired to wash cars. The company had sent the claimant on two to three training courses per year and he began working as a mechanic. There were no problems with the claimant's work and he used the garage facilities to work on his own cars in the evenings.

It was quiet in November 2008 and so the claimant was put on a one-day week. When it got busier in December the claimant was put on full time hours again. During this time he was working on vehicles, doing the stock check in the stores and cleaning.

On December 27th 2008 the claimant said that he was leaving and going into partnership with a friend in Dundalk. The claimant said he needed €4,000 to buy into the partnership and wanted his P45 and P60. The claimant came to the workplace during the first week of January 2009 and asked for his forms and said that he was going on holidays. The witness said that she would have his forms for him the following week.

The following week the claimant asked for social welfare forms to be signed, which the witness refused as he wasn't working there anymore. The claimant wanted to be put on the books for one day per week so that he could claim social welfare, but he wasn't looking for work. The claimant became cross when he was refused. The accountant kept a note of the conversation and put it in a letter to keep as a statement. The accountant contended that there was work for the claimant in January 2009. Work was reorganized in the company and one employee who worked on the farm was brought in to help in the garage and MD took on more work also.

The MD of the respondent company gave evidence that he had a conversation with the claimant, on the Friday or Saturday before Christmas, about an opportunity the claimant had to buy into a business. MD wished the claimant the best of luck. MD disputed that there was any discussion about working after Christmas. MD had no problem with the claimant's work and had no problem with him using the garage after hours for his own work. The new business was in Dundalk and not competition for the respondent company.

During cross-examination MD stated that he was shocked that the claimant had sought to stay on the books so that he could claim social welfare. MD stated that the employee who was working on the farm, which was quiet during the winter, was still employed. The claimant was trained to carry out warranty work which MD had had to learn since. MD had no reason to believe that the claimant wasn't working with his partner in Dundalk when he left. MD believed it was the 22nd December 2008 when the claimant resigned.

Determination:

Having heard the evidence adduced the Tribunal finds that a redundancy situation existed and that the claimant is entitled to a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2007, based on the following information:

| | |
|-----------------------|--------------------------------|
| Date of Birth: | 24 th July 1978 |
| Date of Commencement: | 11 th March 2005 |
| Date of Termination: | 27 th December 2008 |
| Gross Weekly Pay: | €450.00 |

This award is made subject to the claimant having been in insurable employment under the Social Welfare Acts during the relevant period.

As redundancy and unfair dismissal claims are mutually exclusive the claim under the Unfair Dismissals Acts 1977 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)