

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

- claimant

MN988/2009

RP1098/09

UD971/2009

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: Ms P. McGrath

Members: Mr P. Pierce
Ms M. Finnerty

heard this claim at Dublin on 26th March 2010

Representation:

Claimant :

Mr. John Murphy, Assistant Branch Organiser, SIPTU,
Construction & Allied, Trades Branch, Liberty Hall,
Dublin 1

Respondent :

XXXXXXX

The determination of the Tribunal was as follows:-

Determination:

The Tribunal has carefully considered the evidence adduced before it in the course of this hearing.

A conversation took place between the Claimant and the Contracts Manager of the respondent company some time late 2007. The Claimant requested annual leave to travel to Australia for an extended break. The parties gave conflicting evidence about this conversation with the respondent witness stating that he could not “guarantee” a job for him on his return. The Claimant understood he’d be back to work on his return as per previous years.

It seems the Claimant was involved in an accident a few days after the conversation described. This was to leave the Claimant unfit to work for well over a year.

The Respondent witnesses made the case that since a job in the workplace had not been “guaranteed”, the claimant’s employment came to an end when he took his annual leave by arrangement.

The Tribunal cannot agree with this interpretation of events. If the Respondent had believed that the employment had come to an end then a P.45 would have issued which had not been confirmed by Revenue as having happened. In addition surely some formal notification would have been given to the effect that the relationship had ended. No such letter was ever sent by management or payroll. Either way, it should be noted that the employee’s inability to work arose on the Friday the 7th of December some three days before he was due to travel.

The claimant submitted certificates to the Respondent company for some sixteen months after the accident. These were accepted by the company and used to process the C.I.F. claim for Sick Pay under that scheme.

It is noted that the company even went so far as to write to the Claimant in November 2008 regarding its policy for accepting Medical Certificates. This is relevant insofar as it certainly tends to suggest that the Claimant was still considered an employee of the company and the company never gave any other impression.

In March 2009 the claimant was certified fit to return to work

It is generally accepted that the Construction Industry was in decline by this time. The Tribunal accepts that the Respondent had no work for the Claimant.

There therefore existed a genuine redundancy situation and therefore the company should have given the relevant notice at that time, 25th March 2009.

The Claimant is entitled to a Redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following:

Date of Birth	18 th October 1975
Date employment commenced	27 th September 2004
Date employment ended	08 th April 2009
Gross weekly pay	€622.83

Please note that a weekly wage ceiling of €600 applies to all payments from the Social Insurance Fund

Please also note that this award is being made subject to the claimant having been in insurable employment under the Social Welfare Acts during the relevant period

The claimant is also entitled to €1,245.66 which is the equivalent of two weeks pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The claim under the Unfair Dismissals Acts, 1977 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

