

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO.
UD842/2009
MN881/2009
WT372/2009

against

EMPLOYER – respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms E Kearney BL

Members: Mr T Gill
Mr G Whyte

heard this claim at Loughrea on 25th March 2010

Representation:

Claimant(s): Mr Davitt Geraghty
Geraghty & Company, Solicitors, 1 Rosemary Avenue, Eyre Square, Galway

Respondent(s): Mr Michael McDarby
McDarby & Co, Solicitors, Glebe St, Ballinrobe, Co. Mayo

The determination of the Tribunal was as follows:

Claimant's Case:

The claimant was employed as a bricklayer by the respondent company from March 2002 until January 2009. Just before Christmas 2008 he was working on a job at his employer's house. His employer told him that work was very quiet and asked him if he would be interested in taking redundancy. The employer said that the other two employees would be claiming social welfare payments. He was told to take an extra week off after Christmas. He took an extra week's holiday in January, but never received the payment indicated on his P45.

The claimant did not return after the Christmas holidays as he was sick. He spoke to his employer on the phone in late January and was told that the business wasn't good. He asked how much his redundancy payment would be. When he met his employer in February 2009 he was told there was only a second fitting left at a school. He received his redundancy payment in mid-February.

In March the claimant drove past the school where the company was working and saw work being carried out. He spoke to one of his former colleagues who told him that there was a lot of work still to be done. He asked his former employer why he had been let go when he had the longest service, but he was dismissive of the claimant. The claimant felt unfairly treated and had accepted the redundancy payment as he believed he had no other choice.

Respondent's Case:

The managing director of the respondent company gave evidence that the amount of work had dropped in 2008, and that by December he was employing his three employees to work at his house. He contended that he asked the claimant on December 4th 2008 if he was interested in taking a redundancy payment. The claimant took time to think about it. He also offered the two other employees if they were interested in taking redundancy, but they were not interested and decided to wait and see what happened. The director made a note in his diary of when he had conversations about the redundancy with the claimant.

There was a further conversation regarding how much the claimant would be entitled to. The claimant accepted the offer of redundancy before the Christmas holidays, but did not want to finish before the end of January 2009. The claimant was aware of the job coming up at the school. The claimant was given two weeks' pay for Christmas. The claimant had never said to him that he was owed holiday pay or pay in lieu of notice.

The director had extended the school job as much as possible by doing a lot of the work himself. The job had then been added to when the school secured more funding.

Determination:

The Tribunal finds that the claimant was not unfairly dismissed. The claimant accepted an offer of redundancy. The employer has proven that a genuine redundancy situation existed due to the downturn in the economy and the lack of work available. Further, the Tribunal finds that he was not unfairly selected for redundancy. Furthermore, there was no evidence that he accepted the redundancy payment under duress, and cashed the redundancy payment, so as to negate the redundancy agreement.

The Tribunal awards the claimant €691.14 (six hundred & ninety-one euro, fourteen cent) under the Organisation Of Working Time Act, 1997. The Tribunal awards the claimant €2,456.88 (two thousand four hundred & fifty-six euro, eighty-eight cent) in respect of four weeks pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)