

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

Employee

*-appellant*

CASE NO.

UD2442/2009

RP1398/2009

MN2266/2009

WT1030/20009

against

Employer

*-respondent*

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**REDUNDANCY PAYMENTS ACTS, 1967 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. Daly B.L.

Members: Mr. D. Morrison  
Ms. R. Kerrigan

heard this claim at Letterkenny on 18th February 2010  
and 12th April 2010

### **Representation:**

Appellant: Mr. Sean MacAogha instructed by Gallagher & Brennan, Solicitors, House B,  
Carnamuggagh Upper, Kilmacrennan Road, Letterkenny, Co Donegal

Respondent: Ms Patricia McCallum instructed by M M Mulrine & Co, Solicitors, Port Rd,  
Letterkenny, Co. Donegal

The determination of the Tribunal was as follows: -

The claim under the Unfair Dismissals Acts, 1977 to 2007, the Minimum Notice and Terms of Employment Acts 1973 to 2005 and the Organisation of Working Time Act 1997 were withdrawn at the outset.

### **Appellant's Case**

The appellant commenced employment with the respondent as a joiner/carpenter in January 2002. The appellant worked the first week in January 2009 and was informed the following week that work was quiet and he was being put on short time. The first 4 weeks the appellant worked a three-day week and on the fifth week he worked a two-day week. The appellant was put on lay-off

for 4 weeks and agreed to return to work on the 23<sup>rd</sup> of March 2009. The appellant worked for a week but as there was no work available the appellant served the respondent with the RP9 on the 27<sup>th</sup> of March 2009. The respondent said he was going to seek legal advice before signing the RP9 form. On Monday the 30<sup>th</sup> of March the respondent said he would complete the RP9 form and drop it into the appellant's house. By phone the respondent said that he could not offer the appellant the required 13 weeks work but stated that he could on the RP9 form. The appellant wrote a letter dated the 31<sup>st</sup> March 2009 to the respondent advising him that he would like to take up the respondent's offer of 13 weeks continuous employment as stated on the RP9. The respondent replied advising the appellant to return to work on the 14<sup>th</sup> of April 2009.

The appellant returned to work on the 14<sup>th</sup> of April 2009 but quickly realised that the relationship with the respondent had broken down due to him serving the RP9 form. The respondent informed the appellant that he was going on holidays for a week, normally the workshop would remain open during the respondent's holidays but on this occasion the appellant was informed that as he, "had tried to close him down I couldn't be trusted to be there." The appellant did not have any work the week the respondent was on holidays. The appellant returned to work on the 18<sup>th</sup> of May 2009 to discover if there was any work for him. On the 19<sup>th</sup> of May the respondent accused the appellant of 'working slowly' and due to the respondent's behaviour and the lack of work available the appellant stopped working for the respondent.

#### *Cross Examination*

The appellant was never offered the keys to the workshop in order to go to work while the respondent was on holidays. The appellant was never informed that his work was secure or guaranteed; correspondingly the appellant was never informed that there was no work available for him.

#### **Respondent's case**

The respondent stated that the appellant was temporarily laid off on 17<sup>th</sup> February 09. Work then became available again and the appellant was asked to return to work on 16<sup>th</sup> March 09. However the appellant had "things to do" that week and agreed to return on 23<sup>rd</sup> March 09. The appellant duly returned to work on 23<sup>rd</sup> March 09. On the 27<sup>th</sup> or 28<sup>th</sup> March the appellant handed the respondent an RP9 form notifying his intention to claim a redundancy lump sum. The respondent then replied in writing confirming that he could offer the appellant thirteen weeks continuous employment.

On the 8<sup>th</sup> May 09 the respondent asked the appellant if he would run the work shop while he (the respondent) was on holidays. The respondent did not want to close the shop for the week of his holiday, as it would be bad for business. However he had no alternative but to close when the appellant refused to run the work shop for that week saying that he had other things to do and did not care if the work shop had to close.

The appellant came back to work on 18<sup>th</sup> May 09 and worked that day and the following day. At 5pm on 19<sup>th</sup> May 09 the appellant left work and has not returned since. The respondent asked the appellant how many hours he had spent on two particular jobs. The appellant asked the respondent did he think he was not working hard enough and did not answer the respondent's question.

After this the respondent employed another person and soon afterwards his own two sons worked with him for the summer holidays. In September 09 the respondent advertised the vacant position with Fás.

## **Determination**

The facts of this case are that the appellant was on lay off for at least four continuous weeks when he served an RP9 form on the respondent. The respondent then offered the appellant thirteen weeks continuous employment commencing within the following four weeks. This was done in accordance with section 12(1) and 13(1) of the Redundancy Payment's Act, 1967.

The appellant accepted this offer and returned to work. However within thirteen weeks of the appellant returning to work the respondent took a one-week holiday during which time the appellant did not work nor was he paid. There was conflicting evidence in relation to whether work was available to the appellant during this one-week period. Notwithstanding this the Tribunal are satisfied that this break of one week was not as a result of short time or lay off. There was work available.

The Tribunal having considered the evidence presented to it and having particular regard to section 13(1) of the Redundancy Payment's Act, 1967 is satisfied that it was reasonable of the respondent on the date he issued the RP9 to expect that there would be thirteen weeks work available to the appellant and that during that time he would not be on short time or lay off. Therefore the claim under the Redundancy Payment's Act, 1967 To 2007 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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