

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE
-Claimant

CASE NO.

UD1302/2009

MN1294/2009
WT581/2009

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. M. Levey B.L.

Members: Mr. M. Murphy
Mr. G. Whyte

heard this claim at Dublin on 25th February 2010

Representation:

Claimant: Ms. C. McGrady B.L. instructed by Feran & Co., Solicitors,
Constitution Hill, Drogheda, Co. Louth

Respondent: Ms. M. 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:

The claim under the Organisation of Working Time Act, 1997 was withdrawn at the outset of the hearing.

Respondent's Case:

The respondent is a construction company. The claimant commenced employment with the company, as a foreman, in July 2007. A director of the company gave evidence to the Tribunal of the downturn in the respondent's business. The claimant was made redundant

on the 14th November 2008. At that time the company had a number of the houses on site rented out and otherhouses were lying vacant. There were three foreman employed, each with a different speciality. The claimant was the snagging and finishing foreman. Currently, the respondent does not have anyconstruction employees. Two female employees work in the office collecting rent and two othersare employed in caretaking/security positions.

A carpenter worked for a further week after the claimant but was subsequently made redundant on the 21st November 2008.

The claimant worked on a specific site and he was one of the last employees to be made redundant on the site. Some days prior to the 14th November 2008 the director discussed the company's financial difficulties with the Site Manager. The site had to be wound up unless the bank lent the money to finish the remaining houses on site. They discussed the possibility of finishing some of the properties for a rent-to-buy scheme. However, it was too costly to finish the houses compared to the rent that would be generated. The director was aware that the Site Manager outlined to the claimant that there was a possibility the site would be closing. Some days later, the director asked the Site Manager to inform the claimant that his position was being made redundant. The Site Manager informed the claimant and other employees of their redundancy on the 14th November2008. The director hoped to have a conversation with the claimant during his week's notice to ensure a proper handover of the snagging list. However on Monday, 17th November 2008 a letterfrom the claimant was found in the office. The letter stated that the Site Manager had given him aweek's notice on Friday and he requested a P45 and reference to be sent to his home address. Thedirector stated that depending on an employee's status they may be required to work their notice. As the claimant was a foreman the director required the claimant to work his notice and to performa proper handover of the snag list for the remaining houses but this was not afforded to the company.

No foreman remained on site after the claimant's redundancy. One week later there were no remaining employees on site. The company engaged a sub-contractor after that, as the remaining work was intermittent. The site closed completely in June 2009.

During cross-examination the director was asked if the claimant had been considered for a caretaking position. The director replied that he did not know if the claimant would have been interested in this position as he had been a foreman, however as he had difficulty making contact with the claimant, the director had not been given the opportunity to make such an offer to the claimant.

The Site Manager gave evidence to the Tribunal that on the 14th November 2008 he informed the claimant that he was being given one week's notice, as his position was redundant. The Site Manager outlined to the Tribunal the downturn in the respondent's construction business. During2008 no further houses were built and the work that remained was "finishing" work. A number ofemployees left the employment of their own accord. Other employees who had the requisite service were paid their redundancy entitlements.

Claimant's Case:

It was the claimant's evidence that at 9.30am on the 14th November 2008, the director arrived on site and called the claimant to one side. The claimant was seeking pay he believed he was owed for

overtime hours. The director verbally lashed out at the claimant and said if the claimant did not do what he said then, “that was it.” The claimant stated he was “more or less threatened” by the director. Later that morning the claimant spoke with the Site Manager and stated that he had a feeling that something would happen as a result of the altercation with the director.

At 2.50pm the Site Manager informed the claimant that he was “fired”. The claimant told the Site Manager that he had expected it after the altercation with the director.

No alternative roles were discussed with the claimant and agency workers were brought in to carry out the snagging work. The claimant stated that work was available on the site until June 2009.

The claimant gave evidence pertaining to loss.

During cross-examination the claimant accepted that fourteen of the eighteen employees on the site had been made redundant prior to the 14th November 2008. The claimant stated there was plenty of work on site but agency workers did it.

It was put to the claimant that he had stated in his letter to the respondent that he had been given one week’s notice by the Site Manager. The claimant stated that he wrote the letter, as he did not want to return to the site after the altercation with the director.

Determination:

The Tribunal carefully considered the evidence adduced. The Tribunal is satisfied that a genuineredundancy situation existed in relation to the termination of the claimant’s employment. The Tribunal is further satisfied from the letter written by the claimant and dated the 17th November2008, that the claimant was provided with notice. The claims under the Unfair Dismissals Acts,1977 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)