

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE – *claimant*

CASE NO.
UD1711/2009
RP1909/2009

against

EMPLOYER – *respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs M Quinlan

Members: Ms J Winters
Ms M Finnerty

heard this claim at Dublin on 30th September 2010

Representation:

Claimant(s): Mr Martin Canny BL, instructed by:
Mr Ronald Egan
Ronald J Egan & Co, Solicitors, 9 Charlotte Street, Newbridge, Co Kildare

Respondent(s): In person

The determination of the Tribunal was as follows:

As dismissal was in dispute the claimant went into evidence first.

Claimant's Case:

The claimant was employed as an insulation fitter by the respondent company, a sub-contractor, from January 2006 until July 2009. The employment was uneventful until Tuesday 26th May 2009. The managing director (MD) sent him to a site, but by the time he arrived the site induction was over. He wasn't allowed to work on site that day. He returned the following day and went for the safety induction. He was told to go to a site officer to get a permit afterwards, but the claimant couldn't find him. He decided to begin working.

He was working on a roof when a health and safety officer asked him for his permit, which he didn't have. He was issued with a temporary certificate and finished his work that day. He was

asked to produce a form for the chemicals he was using. He didn't have the form and contended that it was the company's responsibility to provide it.

The contractor that operated the site wrote to the respondent company to inform them that the claimant was banned from their sites. He was issued with a written warning on June 2nd 2009 for breaching site safety regulations as the site contractor had issued the respondent company with a 'major safety violation' notice.

He worked on a job at a nursing home afterwards, but on June 29th 2009 the MD told him that he was being put on temporary lay-off. They argued over how long temporary lay-off should be. The MD argued that it was 13 weeks, but the claimant argued that it was a maximum of four weeks. He asked for a redundancy payment, but the MD refused. He was not issued with an RP9 form. He was issued with a P45 form. The MD said he would phone him if any work came up. The claimant did not believe he was an employee anymore.

He received a letter from the company, dated June 29th 2009, entitled 'notice of employment termination'. He was given two weeks notice of the termination of his employment.

A few weeks later the claimant received a couple of phone calls from the MD, but he didn't answer them. He received a phone call from a colleague which he answered. The colleague told him that the MD wanted him to come back to work, but the claimant refused. He refused because he believed he had been made a scapegoat by the company regarding the site incident. He preferred to stay on Social Welfare payments than go back and he had already applied for his redundancy payment and had gone to a solicitor.

During cross-examination the claimant agreed that the MD had told him that he was being laid-off because he had been banned from sites run by the their main contractor and the company did not have work elsewhere. He agreed that the MD told him that he would call him when an upcoming hospital job commenced. He was sent on a safety course in preparation for the job. The claimant considered that he wasn't on temporary lay-off because he was issued with a P45. He agreed that he later refused the phone calls from the MD. He had never been on lay-off before, but he knew others who had been given a form when they were put on lay-off. The letter he received stated 'notice of employment termination'.

Respondent's Case:

The Contracts Manager of the respondent company gave evidence that the claimant was banned from the their main contractor's sites for a number of reasons, not just the permit. He was not wearing the appropriate safety gear when working on the roof. The contractor issued the company with a safety violation. The respondent company's contracts were mainly with that contractor and so there was very little work to offer the claimant.

They gave the claimant as many other jobs that they had over the next few weeks, but ultimately they had to put him on lay-off while they waited for a hospital job to come up. They did not know exactly when that job would start, but they sent the claimant on a 'working at heights' course in preparation for it. He always expected that the claimant would return.

During cross-examination the Contracts Manager contended that the breach on the site was for incorrect work gear. The claimant had previously attended an induction talk for that site and he was required to attend a second induction because of the breach of the safety regulations on the first

day.

The MD of the respondent company gave evidence that the claimant was a good employee. However, when he was banned from the contractor's sites the MD did not have any work for him except a few jobs, which were exhausted within a few weeks. He offered the claimant a position within three weeks of putting him on lay-off. He told the claimant that he wasn't giving him a redundancy payment because he wanted him to come back.

During cross-examination the MD stated that he had never heard of an RP9 form. He believed that the claimant could come back to him after four weeks of lay-off to seek a redundancy payment or that after 13 weeks he would have to pay him a redundancy payment. He gave the claimant a P45 form so he could claim a Social Welfare payment.

He agreed that the letter to the claimant was entitled 'notice of employment termination' but he meant lay-off. The claimant refused to take his calls when he rang to offer him work. He asked a staff member to phone the claimant and he was informed that the claimant no longer wanted to work for him.

Determination:

The Tribunal finds that while the respondent company issued a letter entitled 'notice of employment termination' to the claimant, both parties gave evidence that at the meeting it was discussed as a lay-off situation, and therefore, the Tribunal finds that there was no dismissal. Accordingly, the Tribunal dismisses the claim under the Unfair Dismissals Act, 1977 to 2007. Further, when the claimant was offered work a few weeks later he indicated his refusal to the company, and therefore, the appeal under the Redundancy Payments Acts, 1967 to 2007, is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)