

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:

CASE NO.

EMPLOYEE

UD1585/2009

RP1784/2009

MN1563/2009

against

EMPLOYER

EMPLOYER

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 C. Egan B.L.

Members: Mr P. Pierson

Ms H. Henry

heard this claim at Roscommon on 2nd June 2010

Representation:

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Claimant(s) :

Mr. Frank Gearty, E C Gearty & Co, Solicitors,  
4/5 Church Street, Longford, Co Longford

Respondent(s) :

Ms Brid Miller, Solicitor, 16 Castle View, Castle Street,  
Roscommon, Co Roscommon

The determination of the Tribunal was as follows:-

The claim under the Redundancy Payment's Acts, 1967 To 2007 was withdrawn from the outset.

The claimant made a formal application to extend his claim to include the Organisation Of Working Time Act.

The respondent stated that the claimant had left of his own volition and had not been dismissed. Therefore the claimant was required to give evidence first.

### **Claimant's case.**

The claimant stated that he commenced employment with the respondent at the end of June 2006 and worked eight hours per day for five or six days per week. He said that he did not receive a copy of his contract of employment. Pay slips were never given to the claimant except on one occasion when he requested one and he alleged that the respondent charged him €50 for this as she claimed that was the amount payable to the accountant for supplying one. The claimant also alleged that for the first eighteen months of employment he received no holiday pay.

The claimant took two weeks holidays and arrived back at work on 21<sup>st</sup> May 2009. He said that he expected to be paid for the full two weeks but only received four days pay and was told by the respondent that she had not got the money to pay him the full two weeks. The respondent told the claimant that another employee was being let go and that he could not take holidays that he had previously arranged, as there would only be two employees now.

The claimant received two written warnings by registered post on the morning of 22<sup>nd</sup> May 2009. One was in relation to an extended lunch break and the other referred to unacceptable behaviour and tone by the claimant, both on 19<sup>th</sup> May 2009. On receiving these warnings the claimant phoned the respondent but could not now recall the content of that conversation. The claimant then went to his place of work.

According to the claimant he was dismissed by the respondent on 22<sup>nd</sup> May 2009. The respondent allegedly asked for an apology in relation to earlier events and phone conversation and subsequently told the claimant to f—k off to Poland and only allowed him into the workplace to retrieve his personal equipment.

The following was put to the claimant by the respondent's representative.

That the respondent had told him that she was moving back to Roscommon and would be working in that premises and therefore was letting another employee go and that he was okay with this. However when she informed the employee in question the claimant threw his arms in the air saying this is f—king ridiculous and I am not going to work with only one other employee and demanded to know what hours the respondent would be working. The claimant denied this.

That the claimant used a very aggressive tone towards the respondent took the keys and left early. The claimant denied this and said that he went outside for a smoke and that the respondent slammed and closed the door and that the claimant's own keys were still inside.

That the claimant said, "so sack me". The claimant denied this.

### **Respondent's case**

The respondent stated that the claimant had left his employment of his own volition. The claimant had to take leave at short notice due to personal circumstances and had been paid for as much leave as he was entitled to at that time. On his return from leave the claimant was informed that one other member of staff was being let go and that the respondent intended to work in her place. The respondent stated that she called to the place of work and informed this other employee of her decision and that the claimant's reaction to this was as had been put to him earlier. Furthermore the respondent said that the claimant had then taken his keys and left work.

The respondent composed a written warning in relation to this incident together with another warning about time keeping and attempted to hand this to the claimant. However according to the respondent the claimant would not accept these written warnings and therefore the respondent sent them to him by registered post. On receipt of these warnings the claimant phoned the respondent and allegedly was abusive towards her. Later that morning the claimant arrived at the premises and was met by the respondent at the door. The respondent asked for an apology but said that the claimant brushed past her and began to gather his personal equipment. According to the respondent she informed the claimant that he had not been fired but he insisted that he had been and told her that he would clean her out.

The respondent stated that she paid the claimant his due wages together with any holiday pay he was due and that on receipt of this the claimant asked for a letter stating that he had been fired. However the respondent refused to issue such a letter and repeated to the claimant that he had not been fired. The respondent stated that even at that stage she would have been willing to take the claimant back into employment.

**Determination.**

Having heard the submissions of the representatives and considered all the evidence adduced at the hearing, the Tribunal unanimously finds that the claimant was not dismissed but rather left of his own volition. Therefore the claim under the Unfair Dismissals Acts, 1977 To 2007 fails.

As the claimant left of his own volition without giving notice to the respondent the claim under the Minimum Notice And Terms Of Employment Acts, must fail.

The Tribunal found there was no foundation for an extension of claims to include the Organisation Of Working Time Act.

The Tribunal did not find that claim was either frivolous or vexatious and therefore refuses the respondents application for costs.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

