

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO:

EMPLOYEE *-claimant*

UD2554/2009

MN1490/2009

WT639/2009

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: Mr. J. O'Connor

Members: Mr. J.J. Killian
Mr. D. McEvoy

heard this appeal on 1st June 2010 in Tralee

Representation:

Appellant: Mr. Paddy Whelehan, Philip O'Sullivan & Co. Solicitors, 14 Denny Street, Tralee, Co. Kerry

Respondent: Mr. John O'Dwyer, O'Donoghue O'Dwyer Solicitors, Langford Street, Killorglin, Co. Kerry

Preliminary Issue

This claim was lodged outside of the six-month time limit from the date of termination of employment imposed by the Unfair Dismissals Acts, 1977 to 2007. The time limit could be extended to 12 months if there were exceptional circumstances as described by the said Acts to cause this delay. This claim was lodged outside of the 12-month time limit. The Tribunal, therefore, rules that it does not have jurisdiction to hear this case and the appeal necessarily fails.

The determination of the Tribunal was as follows: -

Claimant's Case

The Claimant commenced employment with the Respondent, a Construction Company, in September 2005 after he completed The Safe Pass Course. The Claimant was out sick in 2006 for a few weeks due to his high Blood Pressure. The Claimant had heard rumours on the site that Staff were being let go. The Respondent informed him that he was being 'fired' due to his high Blood Pressure. The Respondent informed him that if any further work came up he would contact him. The Claimant did not receive a Contract of Employment, terms of conditions of employment or Payslips.

The Claimant did not receive any Notice or pay in lieu of Notice. The Claimant took two weeks holidays from 2007 to his termination in March 2008 and one week in 2006. The Claimant has not gained employment since his termination and is now in receipt of Social Welfare Illness Benefit.

Respondent's Case

The Claimant approached the Respondent and informed him he could no longer work due to his high Blood Pressure. The Claimant was paid for all the Annual Leave he took. The site did not open on Bank Holidays; the Claimant was paid all his Bank Holiday entitlements.

Determination

The Tribunal find that the claim under the Minimum Notice and Terms of Employment Acts, 1973-2005 fails, as the Claimant did not adequately prove his case.

The Tribunal find that the claim under the Organisation of Working Time Act, 1997 fails because it is out of time pursuant to Section 27 of the said Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)