

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM(S) OF:**  
EMPLOYEE

**CASE NO.**  
UD2180/2009  
MN2023/2009

*- Claimant*

against  
EMPLOYER

*- Respondent*

under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr D. Hayes BL

Members: Mr M. Murphy  
Mr O. Nulty

heard this claim at Navan on 19th March 2010

#### **Representation:**

Claimant(s) : Mr. Matthew Jolley BL instructed by  
Mr Kevin Jolley, Blake Horrigan, Solicitors, Mc Keever House, 4/5 Ushers Court,  
Ushers Quay, Dublin 8

Respondent(s) : Mr. Stephen Sands, Construction Industry Federation, Construction House,  
Canal Road, Dublin 6

The determination of the Tribunal was as follows:-

#### **Claimant's Case:**

The claimant gave evidence. He explained that he had been employed as a dump truck driver driving a heavy vehicle, which carried up to 80 tonnes. His work was located on a section of the M3 motorway project at Dunshaughlin.

On November 14<sup>th</sup> 2008 at 4.40 p.m. he received a call to attend a meeting in Dunshaughlin at 5.30 p.m., some of his other colleagues were present. They were informed that due to the extremely bad weather they would be temporarily laid off. They were surprised. He was given a letter concerning the lay off and a letter for the Department of Social Welfare. The Senior Foreman told them that he was unsure when they would be recalled to work; it depended when the ground dried out. It could be weeks or months.

The following Tuesday he contacted the office and was told by HR Manager if he got his P45 he could collect monies from the Revenue Commissioners and when he was rehired he could hand back his P45. It was his understanding that 2 of his colleagues, carrying out the same work as him, returned to work for the respondent 2 to 3 weeks later.

A letter dated November 18<sup>th</sup> 2008 from the HR Manager was read out. It stated:

*“Dear (claimant)*

*Further to our conversation on Tuesday 18<sup>th</sup> November at which time you asked if I would pay out any holidays still outstanding to date and forward a P45.*

*Please find same attached, hope you have a good Xmas.*

*I’m sure (Contracts Manager) will be in touch if there is anything available in the New Year.”*

He refuted that he had requested his P45. He was told it was a way to retrieve monies from Revenue.

In January 2009 he tried to contact the Contracts Manager but to no avail. After a few days he drove to the site and noticed the truck he had been driving was in use but did not know the driver. He explained to the Tribunal that each driver would drive their own truck and would look after its service. He again tried to contact the Contracts Manager but to no avail. He contacted the head office, spoke to the receptionist and requested to speak to the Contracts Manager. He was put on hold and then she informed him that he had terminated his employment when asking for his P45. He was very annoyed and told the Tribunal that he had no intention of leaving a well-paid job.

In Late January 2009 he contacted the Contracts Manager and asked about work and about another person driving his truck. He was informed that things were a bit slow but hopefully they would call him in a few weeks. He travelled to the site on numerous occasions but was informed they would get in contact with him in a few weeks.

The claimant gave evidence of loss.

On cross-examination he stated he had no problems with the respondent. If he had a problem he could always approach management. He agreed the weather, at the time, was extreme. (It was the time of the flooding around the country.) On previous occasions he had been sent home due to bad weather and was paid “wet time”. He was not aware that 20 other staff were put on temporary lay off.

### **Respondent’s Case:**

The Contract Manager gave evidence. At the time there were 58 staff employed but now there were 38. 10 were put on lay off on November 7<sup>th</sup> and another 10 on the 14<sup>th</sup>. The previous week the machinery was “parked” for 4 of the 5 days. The site was completely flooded and the main contractor was closing it. The Foremen on site spread the word to all staff. Staff were put on temporary lay off because there was nowhere else to send them, the whole country was flooded. Staff, including the claimant, were given an RP9 form.

After 4 weeks if they could not give 13 weeks continuous work to staff they were paid redundancy and minimum notice. The claimant asked the HR Manager for his P45. In December 2008 he had work to offer his staff. He looked through the list of staff. The claimant’s name was not on it.

In January 2009 he spoke to the claimant and told him the site was still very wet, they would have to wait for another few weeks and he would contact him then. The claimant never asked him about another person driving “his” truck. It was not company policy for 1 man to only work 1 machine.

On cross-examination he stated that the reason for the short notice of the meeting on November 14<sup>th</sup> was because the weather had turned very bad and the main contractor had decided to close the site, as it was too dangerous. The Foremen had previously put out word that if the weather got worse staff would be put on temporary lay-off. He was unsure who informed the claimant. He was aware he had missed calls from the claimant but it was a very stressful time. He had a lot of people ringing him at the time.

The HR Manager gave evidence. He stated he was based in their head office in Mayo. On November 18<sup>th</sup> 2008 the claimant contacted him and asked about his lay-off. He informed him it would be for a period of 4 weeks. They talked some more then the claimant asked for his P45 and annual leave that was due.

The claimant did try to contact him on January 8<sup>th</sup> 2009 but he was on sick leave. He rang again on January 12<sup>th</sup> and asked if there was any work, said he had seen some one driving his machine. He replied that it could be someone from another site who had more service than the claimant and advised him to contact the Contracts Manager. He also told him that he had resigned in November.

On cross-examination he stated he would never have suggested to the claimant to request his P45 in order to retrieve monies from Revenue. He never asked the claimant why he wanted his P45. He explained that out of the 10 put on lay-off on November 14<sup>th</sup> 2 had returned to work, 7 were let go and the claimant had left. He did not send a letter with the RP9 form to explain that the situation would be reviewed in 4 weeks.

**Determination:**

The Tribunal is satisfied that, by seeking his P45, the claimant did not intend to resign but that it was done at this employer's suggestion so as to facilitate a claim for a tax rebate. The Tribunal is satisfied that the claimant laboured under the misapprehension that he remained in employment, albeit on lay-off. He continued, long after having obtained his P45, to inquire as to his return to work from lay-off. He was subsequently removed from the list of employees on lay-off by the respondent and accordingly was not recalled to work. The Tribunal is satisfied that, in doing so, the respondent dismissed the claimant. No evidence was adduced to rebut the presumption of unfair dismissal. The Tribunal is therefore satisfied that the claimant was unfairly dismissed. In respect of his claim under the Unfair Dismissals Acts, 1977 to 2007, the claimant is awarded compensation in the amount of €20,000 as being just and equitable in the circumstances.

No evidence was adduced to suggest that the claimant received his statutory notice. In respect of his claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, the claimant is awarded compensation of € 1019.03.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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