

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE – *Claimant*

RP1908/2009

UD1710/2009

MN1656/2009

against

EMPLOYER - *respondent*

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: Mr M. Gilvarry

Members: Mr T. Gill

Mr M. McGarry

heard this claim at Sligo on 25th August 2010

Representation:

Claimant(s) : Mr. Michael Kilcoyne, Sectoral Organiser, SIPTU, Galway No
1 Branch, Forster Court, Galway

Respondent(s) : Mr Terry MacNamara, IBEC, 3rd Floor, Pier 1, Quay Street,
Donegal Town, Co Donegal

Preliminary Point

The claim under the Unfair Dismissals Acts 1977 to 2007 was withdrawn by the claimant's representative at the commencement of the hearing.

Summary of Evidence

The claimant commenced working for the respondent company as a plasterer in April 2001. He was placed on lay-off for a period of time in late 2008 early 2009. The claimant served an RP9 form on his employer 26 April 2009. The respondent company served a counter notice on 1 May 2009 guaranteeing the claimant 13 weeks continuous employment. The respondent's position was that there was no question of a redundancy situation as the company had a full compliment of work available until the end of 2009. The claimant returned to work on 26 May 2009.

On 4 July 2009 the respondent learned that he had lost a contract that was due to commence on 6 July 2009 and last for a 4 week period. The respondent stated that he told his employees that

alternative work was available and offered his employees alternative work. He stated that the claimant declined this offer of work. The claimant disputed this version of events and told the Tribunal that he was not offered this alternative work but was told by his employer to telephone the following Monday (6 July 2009) to check if there was work available. The claimant stated that he telephoned on the Monday, Wednesday and Thursday but there was no work available and he was told to await a phone call from his employer. The respondent stated that he had in fact phoned the claimant on the Monday and Tuesday to tell him that there was no additional work available and that the claimant told him that he had plenty of work to do on his farm and he was happy to wait until 3 August 2009 when new work was due to commence.

The claimant disputed this account and stated that when the employer did not contact him after Thursday (9 July 2009) he signed on as he assumed there was no more work for him. The respondent stated that he then telephoned the claimant on 3 August 2009 to arrange for his return to work. He was taken aback by the claimant's reaction who refused to engage with him and told him that he would not be returning to work.

Determination

It is common case that the claimant served notice by way of form RP9 on the respondent seeking 13 continuous weeks of full time work and the respondent served the appropriate counter notice guaranteeing him this work. As it transpired the full period of work was not forthcoming and therefore the claimant considered himself dismissed by way of redundancy. The respondent states that the claimant volunteered to be laid off again during this 13 week period. The Tribunal found it difficult to believe that the respondent would not confirm in writing to the claimant, that his absence from work was at his own request, especially after being served with written notice shortly beforehand by the claimant.

The Tribunal finds in favour of the claimant and awards him a lump sum payment under the Redundancy Payments Acts 1967 to 2007 based on the following information.

Date of Birth:	18 June 1958
Date of commencement of employment:	6 April 2001
Date of termination of employment:	3 July 2009
Gross weekly pay:	€600

This award is made subject to the claimant having been in insurable employment under the Social Welfare Acts during the relevant period.

The Tribunal notes that it is common case that the claimant volunteered for redundancy and therefore his claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 fails, and is hereby dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

