

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

-Claimant

CASE NO.
UD337/2010
RP518/2010
MN313/2010
WT148/2010

against
EMPLOYER *-Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 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: Ms. K.T. O'Mahony B.L.

Members: Mr. J. Browne
Mr. J. Dorney

heard this claim at Wexford on 11th October 2011

Representation:

Claimant: In person

Respondent: Directors of the company

The determination of the Tribunal was as follows:

The directors of the company consented to the amending of form T1A to reflect the correct employer.

The claimant commenced his employment with the respondent company as an apprentice in March 2004. The apprenticeship was registered with Fás in May 2004 and therefore was due to conclude in May 2008. However, the claimant failed his last examination.

It was the evidence of the company director that an apprentice is given three opportunities to take each examination. However, the onus is on the apprentice to arrange to re-sit the examination. The company repeatedly asked the claimant to organise a re-taking of the examination but the claimant ignored these requests. It was also the company's understanding that Fás had corresponded

iththe claimant several times in relation to this matter.

The company could not retain the claimant indefinitely and therefore he was given notice on the 17th September 2009 that his employment would terminate. The director telephoned Fás to inform them and was told that Fás was archiving the claimant's apprenticeship effective from the 24th September 2009, which meant that the claimant was deemed to have left the trade.

The claimant was paid two weeks' notice but the director accepted that the claimant was owed a further two weeks' notice. As the claimant's employment terminated within four weeks of his apprenticeship being archived, the company did not believe the claimant qualified for a redundancy payment.

It was the claimant's case that his daughter was born in August 2007 and she remained in hospital for some four months. He only received one letter about re-taking the examination. The claimant contacted Fás and was informed that he should contact the college directly. He did this by telephone and in person on several occasions to try and find out about re-taking the examination but he was never sent the information. He confirmed, when asked by the Tribunal, that he did not write to the college. He also gave evidence in relation to outstanding holiday pay.

Determination:

The Tribunal finds that the respondent company was entitled to dismiss the claimant, as he did not take adequate steps to complete the apprenticeship. The claims under the Unfair Dismissals Acts, 1977 to 2007, and the Redundancy Payments Acts, 1967 to 2007, fail.

The respondent company conceded that the claimant is entitled to the sum of €480.00 under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Based on the claimant's evidence the Tribunal also finds that he is entitled €240.00 (being the equivalent of three days' gross pay) under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)