

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE - claimant

CASE NO.  
UD1987/2009  
RP2238/2009  
MN1871/2009

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**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. M. O'Connell BL

Members: Mr. E. Handley  
Mr. J. Dorney

heard these claims in Dublin on 30 July 2010

Representation:

\_\_\_\_\_

Claimant(s):  
Ms. Aoife Marrinan, Richard Grogan & Associates, Solicitors,  
16 & 17 College Green, Dublin 2

Respondent(s):  
No attendance or representation at Tribunal hearing

The determination of the Tribunal was as follows:-

The claimant's representative told the Tribunal that the minimum notice claim was not being pursued and that this was essentially an unfair dismissal claim.

In sworn testimony the claimant, a construction worker, stated that he commenced employment with the respondent on 26 June 2006. PD was his boss. The claimant got on all right and there were

no problems.

Asked how his employment had ended, the claimant said that in summer 2008 he had written a note of application for holidays two weeks before he had intended to take them. PD then gave an answer to the foreman (hereafter referred to as FN) who told the claimant that all was fine. The claimant wanted the two weeks after Friday 25 July 2008 so that he would return on Monday 11 August. He came back on that day to be told by a friend that he had been dismissed. He got no reason for this

The claimant told the Tribunal that he had asked FN for holiday money but that he had been told there was no money in the company for the claimant's holidays. The claimant thought that he had a job after his holidays but that there was no holiday pay. He was not told not to come back.

Asked if the building industry was shut down at that time, the claimant replied that the respondent had had a lot of work and had not had all employees taking holidays at the same time. However, he said that the respondent, which had had thirty to thirty-five employees at first, had been left with about twenty employees. The respondent kept working for about a year after the claimant's holidays.

On the subject of his termination, the claimant said that (after his holidays) he had gone back to the site but his friend told him that there was no work for him because he had been "fired". FN said nothing to him. The claimant tried to call PD but FN told him that PD was not in Ireland. FN could not say if the claimant was dismissed.

Confirming that the date in question was Monday 11 August 2008, the claimant told the Tribunal that all of his workmates had known that he had been dismissed. PD came back the next day and, telling the claimant not to bother him when the claimant asked why he was dismissed, informed him that he would get his last wages on Friday of that week.

Asked why the respondent's written defence (submitted to the Tribunal on receipt of notification of the claimant's claim) had said that the claimant had resigned from his position with the respondent, the claimant replied that he did not know.

Asked if any of his workmates had had their employment terminated at around the same time, the claimant said that it had been just him, that he had called FN a liar (when the claimant was told that the respondent had no money for holidays) and that his termination "was a good reason to scare other people". When it was put to the claimant that the issue had been with him he replied that was what his workmates had said. He believed that the respondent's business was now being carried on in England.

Regarding loss incurred since termination, the claimant said that, after a year in which he had only found part-time work such as cleaning, he had had some nine months of employment in a takeaway for under half the weekly pay he had earned in construction with the respondent. The takeaway had recently closed but he was continuing to seek work.

The claimant's gross weekly pay with the respondent was €720.28. The ceiling for state payments in the event of liquidation or receivership is €600.00 per week.

**Determination:**

The Tribunal notes that the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, was withdrawn.

The appeal lodged under the Redundancy Payments Acts, 1967 to 2007, falls because the case was prosecuted as an unfair dismissal claim and the Tribunal makes an award to the claimant under unfair dismissal legislation.

On the unchallenged evidence of the claimant, the Tribunal is satisfied that the claimant's employment was terminated in circumstances which were unfair. He gave evidence that, on Friday 25 July 2008, he took agreed holidays of two weeks. He was told that there would be no holiday pay but he was not told that his employment was to be terminated.

When he reported for duty on Monday 11 August 2008 he was told by a co-worker that his employment had been terminated. The claimant queried this the following day with his employer who told him in no uncertain terms that his employment had ended.

The claimant was the only employee to lose his employment at that time and he suspected that a personal issue was the motive behind the termination. The Tribunal finds that the claim under the Unfair Dismissals Acts, 1977 to 2007, succeeds.

The Tribunal notes the evidence of the claimant that he sought employment after his termination and that he secured some lower-paid work from May 2009 to shortly before the hearing. In the circumstances the Tribunal unanimously deems it just and reasonable to award the claimant compensation in the amount of €25,000.00 (twenty-five thousand euro) in allowing the claim under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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