

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

-appellant

CASE NO.

UD29/2011

EMPLOYEE

RP967/2010

Against

EMPLOYER

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms F. Crawford B.L.

Members: Mr D. Peakin
Mr. S. O'Donnell

heard this appeal at Dublin on 5th January 2011

Representation:

Appellant: In Person

Respondent: In Person

Claimant's Case

The claimant worked for the respondent from the 18th of May 2007 until his employment was terminated on the 15th of December 2009. The claimant carried out the same type of work throughout his employment and followed the same policies and procedures. The claimant's terms and conditions did not change throughout his employment. The claimant received a letter dated the 11th of June 2009 informing him that his employment had been transferred to the respondent. The owner of the respondent was also a Director of the company the claimant initially worked for.

In December 2009 the claimant applied for unpaid leave, as he had to return to Slovakia for medical treatment. The claimant requested an extension to his intended leave; this request was turned down and later the respondent informed the claimant that if he took extended leave his job could not be guaranteed on his return. The claimant was instructed to phone the respondent on his return to Ireland to see if there was a job available for him. The claimant left for Slovakia on the 18th of December 2009 and returned to Ireland at the beginning of January to find his P45 waiting for him dated the 15th of December. The claimant contacted the respondent and was informed there was no position available for him.

Respondent's Case

It is the respondent's case that the claimant worked for a different company until the 11th of June 2009 and there was no continuity of service from the first company to the respondent.

The Warehouse Manager gave evidence that he informed the claimant that there might not be a position waiting for him if he took extended leave to return home. The respondent informed the claimant that he would have to contact the respondent on his return to check if his position was still available. The respondent issued the claimant's P45 immediately and took the decision to 'let him go' as the claimant 'had no loyalty to us and only had loyalty to his own agenda.' It was also confirmed that there was no new contract of employment issued after June 2009 and that the same holiday agreement from 2008 was used by the respondent company in December 2009 to assess holiday entitlements.

Determination

The respondent stated that they had no objection to the Tribunal dealing with the claim under the Unfair Dismissals Acts, 1977 to 2007.

The respondent confirmed the company name and address. The claimant's terms and conditions of employment did not change from the first company to the respondent, the claimant was not issued with a new contract of employment and all holiday procedures remained the same with the respondent. Accordingly, the Tribunal holds that there was a continuity of service with the respondent from the date of his commencement in the employment on 18th of May 2007 to 15th of December 2009.

The Tribunal find that the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and awards the claimant €4,000.00 as compensation. Accordingly the claim under the Redundancy Payments Acts, 1967 to 2007 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)