

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

MN837/2010

against
EMPLOYER

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony B.L.

Members: Mr. D. Hegarty
Mr. D. McEvoy

heard this claim at Cork on 15th December 2010

Representation:

Claimants:

Ms. Michele Nunan, O'Donnell Breen-Walsh O'Donoghue, Solicitors,
Trinity House, 8 Georges Quay, Cork

Respondent:

IBEC, Knockrea House, Douglas Road, Cork

The decision of the Tribunal was as follows:-

Claimant's case

The claimant stated that he was offered payment in lieu of notice and that there was no stipulation as to when that offer was to expire. The claimant took it that he had until the end of the period of notice to avail of payment in lieu. According to the claimant he contacted payroll before the expiry of notice and informed them that he wished to avail of payment in lieu of notice. However he was allegedly told then that he could no longer avail of this.

At no time was the claimant aware that there was a time period in which he had to accept the offer of payment in lieu of notice. However he agreed that medical certificates were sent to the respondent on a weekly basis to the end of January 2010.

Respondents case

The respondent submitted a copy of a letter dated 18th December 2009 giving the claimant one months notice of redundancy commencing on 21st December 2009 and expiring on 21st January 2010. An offer of payment in lieu of notice was contained in this letter and the author asked that the claimant contact her if he wished to avail of this offer. However the claimant did not contact the author and continued to send in medical certificates and therefore was unavailable for work during the period of notice. A further letter issued to the claimant on 11th January 2010 reminding the claimant that the respondent was still willing to pay the remainder of the notice period. However there was no response to this and the claimant continued to send in medical certificates.

Determination

At the time of termination of employment the claimant was on sick leave. Under the company's sick leave scheme he was paid to 27th December 2009. On the 18th December 2009 the claimant was given four weeks notice of redundancy to expire on 21st January 2010. It is common case that the company agreed to pay him full pay in lieu of notice. However the Tribunal only has jurisdiction to make awards within the provisions of the Act. The claimant received the statutory notice to which he was entitled. Therefore, irrespective of whether or not, due to his illness, he worked he has no further entitlement under the Acts. Therefore the claim under the Minimum Notice And Terms Of Employment Acts, 1973 to 2005 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

