

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.
UD1707/2009
RP1907/2009

EMPLOYEE *-claimant*

MN1654/2009
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 D. Herlihy

Members: Mr T. Gill
Mr F. Dorgan

heard this claim at Ennis on 24th June 2010

Representation:

Claimant: James O'Brien & Co., Solicitors,
30 Castle Street, Nenagh, Co. Tipperary

Respondent: Mr. Conor O'Connell, Construction
Industry Federation, Construction House,
4 Eastgate Avenue, Little Island, Cork

Background:

The claim under the Unfair Dismissals Acts, 1977 to 2007, was withdrawn at the outset of the hearing.

The claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn at the outset of the hearing.

The claim before the Tribunal is one under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The employee was employed by the respondent as a carpenter. The respondent business is connected to the building industry.

Respondent's case:

The Tribunal heard evidence from the foreman of the site. He explained that the claimant was a good employee and there was never a problem with the claimant.

He further explained that the owner/boss) called to the workshop on or about 13th June 2008 and told all of the employees that they would have to be let-go. On 13th June all of the employees got notice. The claimant's contract did not terminate on 08th August 2008 because it was extended verbally. Between 08th August 2008 and 06th February 2009 the claimant's notice was verbally extended about four or five times. Other employee contracts were also extended verbally until it came to a time when they had no more work.

The claimant was one of the last employees in the respondent; there were three other craft workers. The final few weeks' work was at a standstill. The claimant was working outside the workshop sanding church doors because there was no work in the workshop. Finally they had to let the claimant go and they told him this one-week before his employment ended.

Cross-examination:

It was put to the witness that redundancy (notice) was not mentioned to the claimant after 08th August 2008. The witness explained that all of the employees were told; "they were definitely told four or five times". When asked why the claimant was given notice in June 2008 and not in February 2009, he explained that when he got his notice in June 2008, they felt the claimant should have gone then, "we were extending his notice".

Claimant's case:

The Tribunal heard evidence from the claimant. He considered the employer to be a good employer. He received a letter, dated 13th June 2008, regarding notice and that notice was for eight weeks. He was not once told of an extension of the notice. He never had a conversation about being kept on. He was asked how he knew in August 2008 that his employment would be terminated, he replied "because I was told (by the foreman), he said keep the head down you are fine for now, keep working". He never had a conversation about being kept on. The foreman told him that they had a Church to work on and he would be working until then.

Determination:

The claim under the Unfair Dismissals Acts, 1977 to 2007, was withdrawn at the outset of the hearing.

The claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn at the outset of the hearing.

There was a conflict of evidence in this case. However the Tribunal prefers the evidence given by the foreman that the notice was verbally extended. Also a letter, dated 13th June 2008, was opened to the Tribunal informing the claimant that due to shortage of work his employment would be terminated on 08th August 2008. The Tribunal unanimously determines that the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, must fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)