

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE -*Claimant*

CASE NO.
UD2536/2009

RP2964/2009
MN2369/2009

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: Ms. N. O'Carroll-Kelly B.L.

Members: Mr. J. Flanagan
Ms. E. Brezina

heard this claim at Dublin on 9th March 2011

Representation:

Claimant: Spellman Callaghan, Solicitors, Corner House, Main Street,
Clondalkin, Dublin 22

Respondent: Mr. Mark Connellan, Connellan, Solicitors, 3 Church Street, Longford.

The determination of the Tribunal was as follows:

The respondent is a construction company, which mainly carries out public works contracts. There was a dispute between the parties regarding the claimant's date of termination.

Respondent's Case:

A director of the company gave evidence that the last site the company opened was in Edenderry which was where the claimant was located. During the peak of the construction industry the respondent company employed up to 70 employees but now has just two employees and some administration staff. The staff were provided with a letter dated 4 December 2008 notifying them of an impending lay-off situation. Only one employee, the foreman, was retained for a further six months. No employees have been engaged either directly or through an agency since the time of January 2009, when the employees were placed on lay-off. The company continues to quote for work but has been unsuccessful in securing new contracts.

The claimant was placed on lay-off on 9 January 2009. When the company became aware that the claimant was seeking redundancy it made an offer of a redundancy payment to the claimant by letter dated 19 March 2010. However, the claimant declined to accept the offer.

During cross-examination the director denied that a period of lay-off in 2006 was used to punish the claimant. The work on the site where the claimant was working had completed and the sixteen employees (including the claimant) were all placed on lay-off until the company secured other work.

In early 2009 there were no further general operatives employed by the company once the work on its remaining three sites had completed. It was put to the director that two employees were re-deployed to another site. The director stated that two employees were transferred between two of the remaining three sites for a period of six weeks until the work came to an end.

Claimant's Case:

The claimant gave evidence that he commenced employment with the respondent company in June 2001. There were no problems in the employment relationship until he became injured at work during 2006. The claimant requested to be paid during the period of sick leave. In addition to this he made enquiries about the pension scheme. The claimant was subsequently placed on lay-off from the beginning of August to mid-September 2006. It was the claimant's case that the lay-off was punishment for having raised the two issues with his employer. He believed that the company had work available to him during this time.

During 2007 the claimant sought to be paid the correct rate of remuneration and he sought a contract of employment from his employer. His union wrote to the company in this regard on 20 December 2007. When work completed on the site on which he was working, the claimant was again placed on temporary lay-off from 28 February 2008 to 22 May 2008. The claimant believed he was again being punished for raising issues and he believed that many employees returned to work with the company during the time he was on lay-off.

From June 2008 the claimant worked on the company's Edenderry site. In December 2008, all of the employees were given the letter informing them that they were being placed on temporary lay-off. A number of employees were re-deployed during January 2009 but the claimant did not receive an offer of work. By the time of February 2009 the claimant had heard that other employees had been given further work from the respondent company. The claimant raised this issue through his union and the matter was referred to the Construction Industry Disputes Tribunal. That Tribunal issued a finding dated 18 June 2009, which stated that the company should allocate the first available position to the claimant but to date, the claimant has not received an offer of work. Consequently, the claimant lodged a claim to the Employment Appeals Tribunal.

In reply to questions from the Tribunal, the claimant stated that as with the previous lay-off situations it was his hope that eventually the company would return him to work in 2009. The claimant stated that although his last day of work was 9 January 2009, he had completed 15 October 2009 as the date of termination on form T1A, as this was the day he instructed his solicitor to write to the respondent company outlining that he no longer considered himself to be on lay-off and requested the company to clarify the situation.

Determination:

The Tribunal carefully considered the evidence of both parties and is satisfied that a genuine redundancy situation existed in relation to the termination of the claimant's employment. The Tribunal finds that the lump sum payment under the Redundancy Payments Acts, 1967 to 2007, should be based on the following criteria:

| | |
|---------------------------|------------------------------------|
| Date of Birth: | 17 July 1976 |
| Date of Commencement: | 21 June 2001 |
| First period of lay-off: | 1 August 2006 to 15 September 2006 |
| Second period of lay-off: | 28 February 2008 to 22 May 2008 |
| Third Period of lay-off: | 9 January 2009 to 15 October 2009 |
| Date of Termination: | 15 October 2009 |
| Gross Weekly Pay: | €1,192.00 |

It should be noted that payments from the social insurance fund are limited to a maximum of €600.00 per week.

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

The Tribunal dismisses the claim under the Unfair Dismissals Acts, 1977 to 2007, having found that a redundancy situation existed.

The Tribunal also finds that the claimant is entitled to the sum of €4,768.00 (being the equivalent of four weeks' gross pay) under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)