

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE
- claimant

CASE NO.
RP2650/2009
UD2317/2009

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 M. Mc Aveyty

Members: Mr P. Pierson
Ms. A. Moore

heard this claim at Cavan on 16th February 2011

Representation:

Claimant: Mr Alan Crossan, Garrett J Fortune & Co, Solicitors, 11 Church View,
Cavan, Co Cavan

Respondent: In person

The determination of the Tribunal was as follows:-

Preliminary Issue

The claimant's employment was terminated on the 11th March 2009. He lodged his claim with the Employment Appeals Tribunal on the 16th October 2009. This claim was lodged outside of the six-month time limit from the date of termination of employment imposed by the Unfair Dismissals Acts, 1977 to 2007. On the claimant's own evidence, there were no exceptional circumstances as described by the said Acts to cause this delay. The Tribunal, therefore, ruled that it did not have jurisdiction to hear this case and the claim under the Unfair Dismissals Acts, 1977 to 2007 is dismissed.

The Tribunal proceeded to hear the appeal under the Redundancy Payments Acts, 1967 to 2007.

The claimant commenced employment with the respondent on the 31st June 2003; he was dismissed on the 11th March 2009. The claimant maintained that in December 2008, a director of the company informed all of the employees that the factory would be closing in April 2009 and

that they would receive statutory redundancy. While the respondent stated that all employees were informed of the factory's impending closure on the 8th January 2009, they said no date was given.

Previously, the claimant had received verbal and written warnings in respect of his non-attendance at work and also for failing to contact the respondent on these absent days. On the 14th October 2008 the claimant received a final written warning. In November 2008 the claimant arrived late for work and in an unfit state to carry out his duties. Another final written warning was issued. On the 7th February 2009 the claimant failed to turn up for work; the respondent wrote to the claimant on the 13th February 2009 in respect of this. This letter states that the claimant was now aware that the factory was being shut down and that the respondent would be paying statutory redundancy and as a result of this, they would give him one final chance to improve his attendance and behaviour. Through this letter, the respondent encouraged the claimant to adhere to the attendance rules and to improve his behaviour.

On Monday 9th March 2009 the claimant arrived two hours late for work and unfit for work, he was dismissed from his employment on the 11th March 2009. The claimant in his evidence stated that he felt that the respondent had dismissed him in order to avoid paying him redundancy. Also for some of these warnings, the claimant stated that he had sick certificates to cover these dates.

The respondent confirmed that notification of the impending redundancies was given to the Department in January 2009. Individual names were not provided. The first redundancy took place in May 2009 and the remaining 21 employees were made redundant in October 2009. The respondent had given the claimant an extra final chance so he would receive his redundancy. However when the claimant did not turn up for work in February 2009 there was a lot of resentment from the other staff. They had no other alternative in relation to the March incident, but to dismiss him.

Determination

The Tribunal carefully considered the evidence adduced and the documentation provided at the hearing. It is clear that the claimant was dismissed in March 2009 due to behavioural reasons; therefore he disqualified himself from the redundancy process. Accordingly the Tribunal dismisses the appeal under the Redundancy Payments Act 1967 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)