

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

EMPLOYEE

UD1296/2009

RP1475/2009

MN1287/2009

WT574/2009

Against

EMPLOYER

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
ORGANISATION OF WORKING TIME ACT, 1997  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. G. Hanlon  
Members: Mr. C. McHugh  
Ms. A. Moore

heard this claim at Dublin on 25th May 2010 and 11th October 2010

Representation:

\_\_\_\_\_

Claimant:

The claimant in person

Respondent:

Ms. Anne Byrne, IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

**Claimant's case**

The Claim under the Unfair Dismissals Acts, 1977 to 2007 was lodged with the Tribunal more than 6 months but within 12 months of the date of termination of employment. The claimant applied to have this claim heard on the grounds that there were exceptional circumstances within the meaning of section 8(2)(b) of the Unfair Dismissals (Amendment) Act, 1997 as to why he did not lodge a

claim. The claimant stated that he was unaware of the requirement to lodge a claim within 6 months of the date of termination of employment. He also stated that for a period exceeding six months beyond the date of termination he was actively engaged in discussions with the respondent in an effort to secure reengagement.

The Claimant agreed that a decision had already been given by the Rights Commissioner in relation to a claim for holiday pay under the Organisation Of Working Time Act, 1997 and that the decision had not been appealed.

The claimant offered no verbal or written evidence in relation to his claim under the Minimum Notice And Terms Of Employment Acts, 1973 to 2005.

In relation to his claim under the Redundancy Payments Acts, 1967 to 2007 the claimant stated that he had worked for the respondent from 1<sup>st</sup> July 2005 to 30<sup>th</sup> June 2008 and was let go at the end of a fixed term contract. The position he had occupied was not filled after his departure. The claimant did not receive any payment in respect of a redundancy lump sum.

### **Respondent's case**

The respondent provided documentary evidence in relation to discussions with the claimant subsequent to the termination of his employment. It was the position of the respondent that it was made clear to the claimant from the outset that he was not going to be reengaged and that the discussions were always in pursuance of his claim that he was owed money in respect of his employment.

The respondent contented that a decision had already been given by the Rights Commissioner in relation to a claim for holiday pay under the Organisation Of Working Time Act, 1997 and that the decision had not been appealed. Therefore the respondent held that the Tribunal did not have jurisdiction to hear the same claim.

The respondent stated that the claimant had been paid notice in accordance with the Minimum Notice And Terms Of Employment Acts, 1973 to 2005.

The respondent agreed that the claimant was entitled to a redundancy lump sum payment and that the dates and rate of pay in the table below are correct.

### **Determination**

Having considered the evidence adduced the Tribunal finds that there are were no exceptional circumstances within the meaning of section 8(2)(b) of the Unfair Dismissals (Amendment) Act, 1993 which prevented the appellant from bringing a claim to the Tribunal within 6 months of his dismissal. Accordingly the Tribunal declines jurisdiction to hear the claim under the Unfair Dismissals Acts, 1977 to 2007.

The Rights Commissioner issued a recommendation under the Organisation Of Working Time Act, 1997 in relation to holiday pay and no appeal was lodged against that decision. Therefore the Tribunal declines jurisdiction in that matter.

Having considered the uncontested evidence presented by the respondent in relation to a claim under the Minimum Notice And Terms Of Employment Acts, 1973 to 2005 the Tribunal is satisfied that the appropriate notice was given to the appellant and therefore his claim under these acts fails.

Having considered the evidence adduced in relation to a claim for redundancy and given that the respondent agreed that the claimant was entitled to a redundancy lump sum the Tribunal awards the claimant a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria.

DOB	26 <sup>th</sup> October 1963
Commencement Date	1 <sup>st</sup> July 2005
Date notice received	N/A
Termination date	30 <sup>th</sup> June 2008
Gross pay	€2,123.57 per week

This award is made subject to the claimant having been in insurable employment, during the relevant period, in accordance with the Social Welfare Acts.

It should be noted that any payment made from the Social Insurance Fund is based on maximum earnings of €600.00 per week.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

