

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF

CASE NO.

EMPLOYEE – **Claimant**

UD1302/2010

RP1765/2010

MN1256/2010

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. N. Russell

Members: Mr. J. Browne  
Mr. F. Dorgan

heard this claim in Waterford on 29<sup>th</sup> March 2011

Representation:

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Claimant: Mr. Emmet Halley, M M Halley & Son, Solicitors,  
Presentation House, Slievekeale Road, Waterford

Respondent: Mr. Neil J. Breheny, Neil J. Breheny & Co., Solicitors,  
4 Canada Street, Waterford

The determination of the Tribunal was as follows: -

The claimant worked for the respondent as a machine and truck driver from September 2003. In late November 2008 the claimant sought time off work because his father was ill. The managing director (MD) agreed to this. The claimant's position is that this arrangement was for one week only and that when he telephoned MD the following week he was told another man was doing his job and that MD would phone him when work was available. Having repeatedly contacted MD and

being told there was no work for ten weeks he then sought a redundancy payment by handing MD redundancy forms at which time a figure was agreed upon and the forms posted to the respondent's accountant.

In mid December he phoned the respondent and was told there was no work available. Four weeks later he contacted the respondent and was told there was no work available. At the end of January 2009, he had no money left and contacted the respondent seeking redundancy. Ten weeks had passed so he got redundancy claim forms and went into the respondent's office and handed him the forms. They shook hands on a figure and the claimant posted them to the respondent's accountant.

The respondent's position was that they were on their biggest ever job when the claimant asked for time off and this went on until April 2010. As well as this job, they also had regular customers to service. When the claimant sought time off in November 2008 he didn't say how long he needed off. There had been no contact from the claimant until February 2009 when he asked MD to fix him up for redundancy. MD told the claimant that he would talk to his accountant, and look into it; he had never seen the forms before. On the 20<sup>th</sup> March 2009, the claimant handed him a RP50 form. MD did up an envelope and gave it the claimant to give to his accountant.

He got booklets on redundancy and read through them. He contacted the claimant and told him the forms were not filled in correctly and asked him to come down to his premises. He asked the claimant into his office and handed the form back to the claimant telling him he had no interest in making him redundant. After consulting his accountant MD told the claimant that he had plenty of work and there was no redundancy situation, the claimant refused the offer of work.

**Determination:**

The Tribunal having carefully considered the evidence adduced at the hearing prefers the evidence of the respondent and finds that the claimant left the respondent's company of his own volition. Accordingly, claims under the Unfair Dismissals Acts, 1977 to 2007, the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 do not arise.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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