

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

EMPLOYEE

UD301/2010

RP493/2010

MN278/2010

WT137/2010

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: Ms. K.T. O'Mahony B.L.

Members: Mr. D. Hegarty

Mr. O. Wills

heard this claim at Cork on 16th December 2010

Representation:

\_\_\_\_\_

appellant:

Daniel Snihur. Independent Workers Union, 55 North Main Street, Cork

Respondent:

Dan O'Brien. OBOR, Unit 1, Joyce House, Barrack Square, Ballincollig, Co. Cork.

The determination of the Tribunal was as follows:-

At the outset of the hearing the appellant withdrew his claims under the Unfair Dismissals Acts, 1977 to 2007 and the Organisation of Working Time Act, 1997.

**Summary of Evidence**

The appellant commenced employment with the respondent on 1<sup>st</sup> September 2004 and contended that his employment ended on 6<sup>th</sup> February 2009 by reason of redundancy. His gross pay was €505.00 per week.

According to the appellant he took Christmas holidays on or around 20<sup>th</sup> December 2008 and was due back to work on 6<sup>th</sup> February 2009. On his return to work the respondent gave him work for that day but at the end of the day told him that there was no more work after that and that he would phone him if any became available. The respondent never phoned him again. The appellant contended that he asked about redundancy at that stage but this was disputed by the respondent. Social Welfare sought confirmation that the appellant's employment had ended so he contacted the respondent about this around the end of February 2009 and received his P45 some days later. The appellant denied receiving a call from the respondent in late February 2009 offering him work in Co. Kerry.

The respondent's position was that the appellant returned to work for one day on 6<sup>th</sup> February 2009, after the Christmas holidays. The respondent explained to him that due to adverse weather conditions and a delayed contract there would be only three days work per week for the following three weeks. The appellant explained in broken English that this would not be good enough for him. The respondent was surprised as this was normal in the industry at this time of year and was the pattern over previous years. The respondent explained to him that he could claim for the days off. However, the appellant did not return to work. The appellant had not raised the issue of redundancy with him.

The respondent's further evidence was that on three successive days in late February he had tried to contact the appellant and eventually the appellant answered his mobile on Wednesday 25<sup>th</sup> February 2009. The respondent explained to him that the three-day week had only been for the three-week period after the holidays and that it was now full-time for the rest of the year, as usual. The appellant informed the respondent that three days a week was not good enough for him and that he had another job with his cousin in Castleisland, Co. Kerry, on a pig farm. When the appellant refused to return to work the respondent took on another worker in his place. The appellant denied ever having been in Castleisland.

The respondent's evidence was that prior to 6<sup>th</sup> February 2009 he employed two full-time workers: the appellant and another. After 6<sup>th</sup> February 2009 he employed one full-time worker and brought in one of two workers on a part-time basis depending on the type of work to be done.

The appellant's evidence was that he worked on a full-time basis for another employer from 19 April 2009 until 31<sup>st</sup> October 2009. The respondent had given him a reference for this employer. Subsequent to this, the appellant agreed to work odd days for the respondent on the basis that the respondent would help him to resolve the problem with his PRSI records for Social Welfare.

The appellant denied receiving any offer of continued employment on a three-day week basis. The appellant had received neither notice of redundancy nor payment in lieu of notice.

### **Determination**

The Tribunal accepts, on the balance of probability, the appellant's version of the conversation of 6<sup>th</sup> February 2009. Subsequent to this, the respondent reduced his permanent workforce by one and brought in part-time workers on an "as needs" basis. Accordingly, the Tribunal finds that

redundancy situation existed in the respondent's business and that the appellant was made redundant. The Tribunal awards the appellant a lump sum redundancy payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria.

DOB	23 <sup>rd</sup> April 1961
Commencement Date	21 <sup>st</sup> September 2004
Date notice received	2 <sup>nd</sup> February 2009
Termination date	6 <sup>th</sup> February 2009
Gross pay	€505.00

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

The Tribunal also awards the appellant €1,010.00 under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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