

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

-claimant 1

CASE NO.
UD612/2009
RP654/2009
MN620/2009
WT267/2009

EMPLOYEE

-claimant 2

UD712/2009
RP778/2009
MN731/2009
WT304/2009

EMPLOYEE
UD713/2009

-claimant 3

RP779/2009
MN732/2009
WT305/2009

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
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. A. O'Mara
Mr P. Trehy

heard this claim at Dublin on 16th February 2010
and 16th September 2010
and 17th September 2010

Representation:

Claimant: Mr. Peter Leonard instructed by Blazej Nowak, Polish Consultancy Enterprise, 19
Talbot Street, Dublin 1

Respondent: In Person

The claims under the Organisation of Working Time Act 1997 and the claims under the Unfair Dismissals Acts 1977 to 2007 were withdrawn at the outset.

Claimants Case

Claimant 1 gave evidence. He confirmed his date of birth and the dates he started and finished working for the respondent. He had worked as a painter and decorator and doing fire safety installation. His last day at work was 14th December 2008. He then left for 3 weeks Christmas holidays. After the holidays he expected to return to work. But after his return he asked his friend to phone the office about work. Claimant 1 was told to wait. Later he was told that there was no work. Claimant 1 did not leave his job and go and work for another contractor on another site.

Claimant 2 gave evidence. He confirmed the information on his claim form for the Tribunal. His last day at work was 11th December 2008. Claimant 2 had arranged that he go on holidays after that day. He gave the company 2 or 3 weeks notice that he was going on holidays. He usually took 3 weeks or a month off at Christmas and came back to work when work was available. While he was home claimant 2 phoned the foreman to ask about work. The foreman told him there was no more work. He phoned the company and the manager told him that there was no work. He returned from his holidays on 27th January 2009 and expected to return to work. However his p.45 was waiting for him. He was not paid redundancy.

Claimant 3 gave evidence. He confirmed the information on his claim form for the Tribunal. He had worked at painting and decorating and installing fire safety equipment for the respondent. He had worked on sites all over the country. It was not unusual for him to experience a delay in returning to work after holidays. The manager would say he should wait.

On claimant 3's last day at work, 13th November 2008, the manager called to the house and called a meeting. The manager said there was no work for him and there will be no work. As sites finished the workers were laid off. Claimant 3 went home for Christmas. He returned on 27th January 2009 hoping work would have picked up. He was not given work instead he found his p.45 had issued while he was on holidays. He asked about a redundancy payment but was told he was not entitled.

Respondent's Case

The Director and Contracts Manager for the respondent gave evidence. All of the claimants left of their own accord after requesting their P45's and their previous weeks wages. The claimant's were replaced. The respondent did not start experiencing the affects of the recession until 2010. The respondent did not tell the claimant's that there was no further work available for them at any stage. The respondent never made redundancies as staff had left naturally. The claimant's P45's were sent the following April to the address of a translator they used. It was normal for staff with the respondent to return home for extended holidays and return to work the claimants did not contact the respondent on their return from Christmas holidays.

The first claimant left his employment without notice on the 14th of December 2007. He requested his P45 and was issued with it by the respondent.

The second claimant left his employment on the 11th of December 2008. The second claimant was returning home for Christmas and was not sure if he would be returning so asked for his P45. The respondent issued the claimant's P45.

The third claimant requested his outstanding holiday pay and told the respondent he was not sure if he would be returning, he left his employment on the 14th of November 2008. The respondent gave the third claimant his holiday and his P45 as he did not know if he was coming back.

Determination

There is a conflict of evidence with regard to the claimant's resigning or being made redundant; requesting a P45 does not prove a resignation. Given the pattern of the claimant's going home to Poland and returning to work, on balance the Tribunal believe that this was the same situation. Accordingly the appeal under the redundancy Payments Acts 1967 to 2007 succeeds and the Tribunal awards the claimants a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2007, based on the following criteria:

Claimant 1

Date of Birth:	22 nd February 1969
Date of Commencement:	8 th October 2004
Date of Termination:	14 th December 2008
Gross Weekly:	€700.00

Claimant 2

Date of Birth:	22 nd March 1976
Date of Commencement:	8 th October 2004
Date of Termination:	11 th December 2008
Gross Weekly:	€723.00

Claimant 3

Date of Birth:	29 th November 1965
Date of Commencement:	8 th October 2004
Date of Termination:	13 th December 2008
Gross Weekly:	€617.00

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

It should be noted that a statutory weekly ceiling of €600.00 applies to payments from the Social Insurance Fund.

The Tribunal allows the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and awards;

Claimant 1 €1,400.00 as compensation for two week's notice.

Claimant 2 €1,446.00 as compensation for two week's notice

Claimant 3 €1,234.00 as compensation for two week's notice

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)