

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD1485/2009

MN1477/2009

RP1665/2009

against

EMPLOYER

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms M. McAveety

Members: Mr P. Pierson

Mr O. Nulty

heard this claim at Longford on 12th November 2010 and 29th March 2011

Representation:

Claimant:

Mr. Alan O'Driscoll, Flynn O'Driscoll, Business Lawyers,
26 Pembroke Street Upper, Dublin 2

Respondent:

Mr. Donal Kerr, North Gate Street, Athlone, Co. Westmeath

Respondent's case

It was confirmed that the claimant commenced employment with the respondent on 18th June 2001 and that his employment terminated on 31st March 2009. The claimant earned €650.25 gross per week.

A letter issued to the claimant on 20th February 2009 informing him that he was being placed on temporary lay-off due to a downturn in business. An ad-hoc meeting took place between the claimant and two directors of the respondent on 23rd March 2009 at the place of business and the possibility of new work was discussed. One of the directors (VF) indicated at that meeting that he was interested in having a library installed in his own home. VF subsequently asked the claimant to

undertake this job and considered that this was an offer of alternative employment. The claimant was to be paid by the respondent for this work and at the same rate as he was paid previously. The type of work involved was similar to what the claimant had been engaged in and the only difference was that he would be located away from the workshop.

The respondent received three letters from the claimant dated 25th March 2009, 27th March 2009 and 31st March 2009 and a further letter from a solicitor on behalf of the claimant. Although there was no written reply to any of these letters the witnesses for the respondent spoke to the claimant face to face and on the phone.

The respondent contended that the claimant had neither been dismissed nor made redundant and that at all times there was a job open to him.

Claimant's case

The claimant accepted that he was placed on temporary lay off for a period of four weeks from 20th February 2009. On 20th March 2009 the claimant spoke to a director (PMcG) of the respondent and was told by him that he would receive a phone call on Monday to let him know whether he had a job to come back to.

The claimant subsequently received a phone call from VF asking him to do a different job. The claimant did not consider this as an offer of return to work with the respondent but that this was an offer to work for VF as an individual. Furthermore, the claimant told VF that he would not consider any job for him until he knew what his own position with the respondent was.

The claimant wrote three letters to the respondent seeking clarification of his employment status and whether he would be returning to work. The Final letter, dated 31st March 2009, informed the respondent that the claimant accepted that he had been made redundant due to the respondent not replying to his previous two letters. No reply to these letters was received.

A further letter was sent to the respondent by the claimant's solicitor on 19th May 2009. This letter outlined the claimant's position with regard to his unfair dismissal. Also enclosed with that letter was a form RP 77 together with a calculation of statutory redundancy and the respondent was requested to confirm that the claimant would receive his full statutory redundancy payment along with a signed form RP50 within 30 days of the date of that letter. No reply to this letter was received.

Determination

The Tribunal is satisfied that the claimant was on a period of lay off for at least of at least 4 weeks and that this progressed to a redundancy situation in accordance with section 12 of the Redundancy Payments Act, 1967. The claimant exercised his right under section 12 by virtue of his letters of 27th and 31st March 2009.

The Tribunal does not accept that an offer of reasonable, alternative employment was made by the respondent and in any event such an offer must comply with section 13 of the Redundancy Payments Act, 1967 and must be in writing.

Having considered the evidence adduced the Tribunal finds that the claimant was not unfairly dismissed and therefore his claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

In circumstances whereby an employee seeks payment of redundancy in accordance with section 12 he is not entitled to minimum notice from his employer and accordingly the claim under the Minimum Notice And Terms Of Employment Acts, 1973 to 2005 fails.

The Tribunal awards the claimant a lump sum redundancy payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria.

DOB	31 st July 1983
Commencement Date	18 th June 2001
Date notice received	N/A
Termination date	31 st March 2009
Gross pay	€650.25

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 through the Social Insurance Fund is calculated based on maximum earnings of €600.00 per week.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

