

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE  
RP1312/2010

UD961/2010

against  
EMPLOYER

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. M. Gilvarry  
Members: Mr. P. Pierson  
Mr. T. Gill

heard this claim at Roscommon on 16th June 2011

Representation:

Claimant:

Ms Doireann Ní Riain, Walter P Toolan & Sons,  
Solicitors, High Street, Ballinamore, Co Leitrim

Respondent:

Callan Tansey, Solicitors, Law Chambers, 3 Wine Street, Sligo

At the outset the claim under the Unfair Dismissals Acts, 1977 to 2007 was withdrawn.

#### **Claimant's case**

The claimant commenced work as a carpenter with the respondent on 14<sup>th</sup> May 2003 and had a good working relationship with him. Work began to slow down in late 2008 and early 2009. The respondent asked the claimant to take some time off on 23 February 2009 and the claimant agreed to do so as he was suffering with bad pain. The respondent told him that he would call him back when more work became available. Over the months that followed the respondent discussed the possibility of work becoming available but nothing ever came of this. Each time they spoke about a possible return to work the claimant would ask about redundancy and the respondent would tell him that if no work became available he would "sort this out for him". However despite the claimant asking him to sign a form RP50 on two separate occasions the respondent declined to do so. The claimant submitted copies of two separate RP50 forms and the

respondent accepted that he had seen these.

It was the claimant's contention that he was placed on temporary lay off from 24<sup>th</sup> February 2009 and despite seeking a return to work on several occasions, the respondent never re employed him and he was therefore made redundant. A copy of a P45 was submitted to the Tribunal and this showed a cessation date of 30<sup>th</sup> April 2009. The respondent confirmed that he had issued this P45.

It was put to the claimant that he had left his job and was claiming illness benefit and was self-employed. The claimant denied this. It was then put to him that he had told the respondent that he would split the money with him if the respondent would sign the RP50. The claimant also denied this.

### **Respondent's case**

The respondent is a carpenter since 1971 and has been a registered business name for some time. He employed the claimant as a carpenter in 2003 and during the "Celtic Tiger" his business grew somewhat. Even though there was a general slow down in the construction industry in Ireland from 2008 the respondent was not personally affected and he continues to have enough work for himself and the claimant.

On the 20<sup>th</sup> February 2009 the claimant asked for time off as he wanted to do some work for his neighbour. The respondent agreed to this. After about two weeks the claimant requested more time off and again the respondent agreed to this. In mid April 2009 the claimant called to the respondent's home and told him that he was "on sick". The respondent was shocked at this as he thought the claimant was now self-employed. The claimant told him that he was much better off and would not be coming back to work for him and they parted friends. Soon after this the respondent completed an online P45 and his wife sent a copy to the claimant. However subsequent to this the claimant called to the respondent with a blank redundancy form and asked him to complete it saying that he (the claimant) was entitled to an amount of money and that, if he got it, he would split it with the respondent. The respondent refused to do this and wanted no part in it.

The respondent has not taken on any full time direct employee to replace the claimant but has, on occasion, engages sub-contractors.

It was the respondent's contention that the claimant left employment of his own volition and therefore is not entitled to a redundancy payment.

### **Determination**

It is noted that the claim under the Unfair Dismissals Acts, 1977 to 2007 was withdrawn.

The Tribunal considered the evidence adduced, both oral and written and there was a clear contradiction in evidence given by the parties. On the balance of probabilities the Tribunal is satisfied that a genuine redundancy situation did exist at the time of termination of the claimant's employment. The claimant was effectively placed on temporary lay off from 24<sup>th</sup> February 2009 and requested a return to work on several occasions. The respondent was then obliged to either offer, in writing to the claimant, a return to work for at least 13 consecutive weeks or payment of the statutory redundancy lump sum. The respondent did neither and therefore the claimant was entitled to consider himself redundant.

Accordingly the Tribunal finds that the claimant was made redundant on 30<sup>th</sup> April 2009 and awards him a redundancy lump sum based on the following criteria under the Redundancy Payments Acts, 1967 to 2007. The tribunal notes that, even though it was common case that the claimant earned €640.00 net per week, the statutory documentary evidence (P45 and RP50) showed earnings of €450.00 gross per week and the Tribunal is satisfied that the latter figure was his correct earnings.

|                   |   |
|-------------------|---|
| DOB               | 25 <sup>th</sup> May 1960                                     |
| Commencement Date | 14 <sup>th</sup> May 2003                                     |
| Period of lay-off | 24 <sup>th</sup> February 2009 to 30 <sup>th</sup> April 2009 |
| Termination date  | 30 <sup>th</sup> April 2009                                   |
| Gross pay         | €450.00 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.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

