

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE

- *First named claimant*

CASE NO.

MN194/2010

EMPLOYEE

- *Second named claimant*

MN276/2010

EMPLOYEE

- *Third Named Claimant*

MN1693/2010

against

EMPLOYER

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal

(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr. J. Reid
Mr G. Whyte

heard this claim at Dublin on 17th May 2011

Representation:

Claimants: No appearance by or on behalf of the First named claimant
Second named claimant – In person
Third named claimant – In person

Respondent:

The decision of the Tribunal was as follows:

The claimants were seeking minimum notice that they were not paid when they received their redundancy. The respondent's position was that because they had applied for their redundancy while on temporary lay off therefore they had forfeited their minimum notice.

A director gave evidence on behalf of the respondent. They had employed the second named claimant since 2001. During the course of his eight years in employment they had invested a lot of training in to him. He was a good employee and they had no issue with his work. There was a downturn in their work and they had offered him a three-day week. The claimant declined this offer and said he would prefer to be laid off. During the course of the lay off in September 2009 the claimant called to the office seeking his redundancy as they were not the position to offer him 13

weeks continuous employment they acceded to his request. The transport manager arranged this claimant's redundancy money. They had issued him with a RP9 when laying him off, however they did not have a signed copy of the RP9 Part B by the claimant on file.

The second named claimant commenced with the respondent in 2004. He was also placed on temporary lay off in December 2007 due to a down turn in business. The respondent produced a letter signed by this claimant stating that he wished to apply for redundancy from the 30th January 2008 and he did not wish to serve a notice period.

The first named claimant gave evidence. The respondent had offered him a three-day week but as this would mean a reduction in his wages he could not accept this. The respondent told him if he could not accept the three-day week he could take redundancy. They also informed him that they could have him on temporary lay off indefinitely. He would have taken the three-day week if every one had being placed on one. He had not signed the RP9 form seeking his redundancy.

The second named claimant gave evidence. He was placed on temporary lay off on the 23rd December 2007. Four weeks later in January he called in to see a director who informed him that there was no work and if he wanted to take redundancy he could have it. He took the redundancy as he had been offered a job elsewhere. He accepted he had signed the letter seeking redundancy however he had not prepared this letter.

Determination

The Tribunal considered the matter and are of the view that the second and third named claimant while on temporary lay off requested payment of their statutory redundancy. Employees who claim or receive redundancy payment due to lay off is deemed to have voluntarily left their employment and therefore are not entitled to notice. Accordingly the Tribunal dismisses the claims under the Minimum Notice and Terms of Employment Acts 1973 to 2005 in respect of the second and third named claimant.

The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 in respect of the first named claimant is dismissed for want of prosecution.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)