EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:	CASE NO.
EMPLOYEE	MN169/2010

against

EMPLOYER
under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary BL

Members: Mr. B. Kealy
Mr. N. Dowling

heard this claim in Dublin on 19 April 2011

Representation:

_____

Claimants(s):
No legal or trade union representation

Respondent(s):
No legal representation at the hearing

The decision of the Tribunal was as follows:-

The claim

The claimant, a security officer, alleged that the respondent had failed to give him notice of his being made redundant as he had been entitled under minimum notice legislation. He gave 10 October 2008 as his commencement date and 17 June 2009 as his termination date.

The defence

On behalf of the respondent, a firm of solicitors wrote to dispute the minimum notice claim stating that the respondent did provide the claimant with the correct notice of redundancy under the minimum notice legislation. It was also stated that the respondent would set out further reasons for disputing the minimum notice claim in early course.

The hearing

At the Tribunal hearing the claimant re-averred that he had got no notice. The respondent's managing director (hereafter referred to as MD) contended that the claimant had resigned and was not due redundancy such that minimum notice did not apply.

The claimant replied that he had not resigned and that his employment with the respondent had been his main employment. He had been working part-time. He had had other part-time work but his work with the respondent had been his principal work. On 17 June 2009 he was told (by NMG from the respondent) that he was being made redundant. NMG ended it.

After being called to take the oath at the Tribunal hearing, the claimant stated that he had commenced with the respondent on 10 October 2008 but had been called to a meeting on 17 June 2009 where he met NMG and was told that he was being made redundant because there was a lack of work available.

Asked at the hearing on what date he was to be redundant, the claimant replied: "There and then." He said that he had asked if he could stay on in case work became available. Work with the respondent was his main form of work at the time. The respondent said that it could not facilitate that. He got his P45 a few days later on 20 June 2009.

When questioned at the Tribunal hearing the claimant accepted that there had been a meeting on 15 June 2009. The Tribunal was now referred to a letter dated 15 April 2009 from the respondent's contract manager (hereafter referred to as FMB) to the claimant which was a notice of reduction in hours and protective notice. It contained the following:

"As you are aware, the UCD campus will be closed from May until mid-September. It is with regret that I must inform you that this will affect your working hours.

You currently work part-time for the company and, due to the fact that the work is event-driven, the level of available work may become more "ad hoc" in nature up to September.

In addition, I must also place you on protective notice that the company may lay you off if our current position does not improve. I will monitor this situation on a daily basis and advise you accordingly.

I would like to thank you sincerely for your dedication and support to your job and I hope the company's situation improves in order to restore you to your current working arrangements."

MD now told the Tribunal that the said 15 April 2009 letter had been sent on that day and that NMG and FMB had met the claimant although MD had not been at the meeting. The claimant had made several calls seeking more hours. The claimant had said that he had work with the O2 Arena and would have to seek other work. MD contended that it had not happened that the claimant had been made redundant.

The claimant now stated to the Tribunal that he could not recall which of the two had said that he was redundant. MD countered that the claimant had refused shifts because of having other work.

Questioned by the Tribunal about the respondent's typed notice of appearance in which a solicitor had disputed the claim and stated that the respondent had provided the claimant with the correct notice of redundancy under minimum notice legislation, MD stated that the matter had been referred to the respondent's solicitors for advice but that the claimant had, in fact, resigned. Asked why that was not on the notice of appearance, MD did not yet have an explanation but merely repeated that the claimant had not been made redundant.

When the claimant stated to the Tribunal that he had never seen the 15 April 2009 letter (despite the fact that it had his name on it) MD said that it had been delivered on-site. The claimant then reiterated that he had never got it, that this day of the Tribunal hearing was the first time that he had seen it and that he had been made redundant on 15 June 2009.

Giving sworn testimony, NMG said that he had been at the meeting in June 2009. FMB, the contract manager, had contacted the claimant to ask him in for a meeting subsequent to the 15 April 2009 letter. The claimant had been looking for more hours. They brought him in to explain to him what was happening for the summer. They told him that they did not have a lot of hours.

NMG told the Tribunal that the respondent tried "to share out the hours) but that, with most of the respondent's clients, he would only get a week's notice of their needs and that this did not suit the claimant. When the respondent asked the claimant what he wanted he decided to look for his P45. No-one said that he was redundant. The claimant was the one who said that he was redundant. The claimant had not been in the respondent's employment for two years or more. The meeting concluded. The claimant was still on the respondent's books. NMG said that he would have to get an accountant to do up the claimant's P45. NMG had run the meeting.

In cross-examination it was put to NMG that the claimant had never got the 15 April 2009 letter. NMG replied that the UCD contract manager had given it to him.

The claimant now stated to the Tribunal that he had previously been made redundant from another job, that his job with the respondent had been his first job after that redundancy and that he would not ask for his job to be ended. NMG did not accept the contention by the claimant that the claimant had offered to stay on the respondent's books. NMG told the Tribunal that the respondent had told the claimant that the hours would "lift" in September 2009 when UCD would be back in operation.

The claimant put it to NMG that the claimant's work with the respondent had been the claimant's main source of employment and that it would have been senseless to leave. NMG replied by saying to the Tribunal that the claimant was not telling the truth, that the respondent had not laid him off and that the claimant had sought his P45.

The claimant reiterated to the Tribunal that he had not offered his resignation to the Tribunal.

During questioning by the Tribunal, the Tribunal was told by NMG that the respondent would give one to five days' work per week for about six hours per day and that the claimant had worked fifteen to twenty hours per week. It was put to NMG that the respondent had said that it had not been able to give the claimant regular work and NMG was asked when would the claimant cease to be an employee. NMG replied that the claimant would still be an employee of the respondent until September 2009 and that the claimant would be an employee of the respondent when work was

there.

When the Tribunal asked if other employees had got the 15 April 2009 letter MD replied that there were some three copies of a similar letter.

Giving sworn testimony, FMB (the respondent's contract manager) said that he had been at the 15 June 2009 meeting with NMG and the claimant. They called the claimant in and explained to him that UCD work was closing for the summer. The claimant was always texting them for more hours. UCD had reduced hours. Work on-site went from enough for ten-to-twelve employees down to enough for four employees.

FMB told the Tribunal that the respondent was going to have hours again and that at no stage was the claimant told that he had to leave nor was the claimant made redundant. The claimant joked with NMG about being made redundant and was told no. FMB had previously spoken to the claimant on 23 April 2009. He gave the 15 April 2009 to the claimant and to another employee (KT).

Summing up, FMB told the Tribunal that the respondent had met the claimant to say that it did not have hours and that the claimant had cracked a joke about getting redundancy. The purpose of the meeting had been to update the claimant on the work situation. Hours were being reduced. The claimant said that reduced hours were no good to him and then sought his P45.

In cross-examination the claimant put it to FMB that he had not cracked any jokes given that he was losing his job. FMB replied that there had been no mention of the claimant losing his job.

Then, the claimant stated that he would not have resigned given that he had always been looking for more hours.

Determination:

On the evidence presented to the Tribunal, the Tribunal allows the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, and determines that the claimant is entitled to the sum of €500.00 (this amount being equivalent to one week's pay) under the said legislation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)