

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE
(*claimant*)

CASE NO.
RP2949/2009
UD2523/2009

WT1071/2009

MN2360/2009

Against

EMPLOYER (*respondent*)

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan

Members: Mr J. Browne
Ms S. Kelly

heard this claim at Wexford on 7th July 2011

Representation:

Claimant(s) :

Mr Dermot F Davis, Dermot F Davis & Co, Solicitors, Parnell
Road, Enniscorthy, Co Wexford

Respondent(s) :

Construction Industry Federation, Construction House, Canal
Road, Dublin 6

The determination of the Tribunal was as follows:-

Respondent's Case

Giving evidence, the Director of the company stated that the claimant worked in the yard in Enniscorthy. The number of employees working the yard was reduced in early 2009. Rather than let the claimant go, the respondent offered work in another location in Drinagh. On 6th March the respondent issued a letter to the claimant informing him of work as a labourer on another site as and from 16th March 2009. The claimant did not report to the Director or Contracts Manager and had requested his P45, which was processed on 13th March 2009. The claimant was not dismissed and the respondent understood that the claimant had terminated his employment.

Under cross-examination, the respondent stated that the company would have addressed the issue of arranging a safe pass certificate for the claimant to allow him access to a site. The company had 15 sites running at the time. The claimant had been told to contact the Contracts Administrator in the letter of 6th March 2009 for information as to where he would be working. The respondent denied that the claimant was being squeezed out. The standard contract makes reference to work on other site locations. The claimant's representative pointed out the standard contract was dated 2005 but the claimant started in 2004. The two employees who continued working in the yard in Enniscorthy were employed before the claimant.

Claimant's Case

The claimant started working with the respondent on 26th October 2004 in the yard in Enniscorthy. His work involved off-loading the lorries and operating the forklift.

He received a contract of employment but was not sure if it included a reference to working on other site locations. He said he was guaranteed work in the yard in Enniscorthy without any site work elsewhere. When he received the letter on the 6th March, he informed the Foreman he had not completed a safe pass course and there was no mention of being sent on one. The Foreman told him he did not know what site he would be working on. The claimant would have been open to attending a safe pass course. The Contracts Administrator also told him he did not know what site he would be working on. The claimant received two weeks holiday pay and one week's notice. He asked for his P45 for social welfare as he felt he had no choice. The reason why he submitted his claim outside the required six months was because he was originally told in the Citizens Information Office that he did not have a case.

Under cross-examination, the claimant stated that he worked on the forklift most of the time. He said the company were aware that he did not have transport to enable him to get to other sites and he did not hold a driver's licence. The claimant said the respondent knew he did not want to work on sites. He told the Contracts Administrator that he did not want to work on sites. He also told both the Contracts Administrator and the Foreman that he did not complete a safe pass course. He would have worked on sites if he had to. He had assumed he would be sent to Dublin, as that was where most of the sites were. The respondent stated that the major site was based in Wexford at the time. The other employee who had started the same day as the claimant also received a letter from the respondent.

The claimant is not now working but has applied for various jobs as well submitting a FAS application. He would have arranged transport to get to a site if he had to.

Determination

The Tribunal having carefully considered the evidence adduced at the hearing finds that due to a downturn in the respondent's business the respondent no longer had work for the claimant at its yard in Enniscorthy. Therefore, the claim under the Unfair Dismissals Acts, 1977-2007, fails. The Tribunal does not find it necessary to make a determination as to whether the reason put forward by the claimant for his failure to submit his claim within the six month limitation period constitutes an exceptional circumstance within the meaning of section 8(2)(b) of the Unfair Dismissals Act 1977, as amended.

When the respondent could no longer offer the claimant work at its yard in Enniscorthy, the respondent offered the claimant alternative work at one of its sites. The claimant did not accept this alternative work. The Tribunal finds the alternative work offered was not suitable alternative work because of the distance of these sites, whether in Dublin or Drinagh, from the claimant's home particularly as the claimant did not have a car or a driver's licence. In these circumstances, the Tribunal finds it was not unreasonable for the claimant to refuse the offer of alternative work. The claim under the Redundancy Payments Acts, 1967 to 2007 succeeds and the claimant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007, based on the following criteria:

Date of Birth:	14 th March 1961
Date of Commencement:	26 th October 2004
Date of Termination:	6 th March 2009
Gross Weekly Pay:	€ 570.24

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

The Tribunal finds that the claimant was entitled to two weeks' notice or pay in lieu of notice. The claimant was paid one weeks' notice. The Tribunal awards the claimant an amount of €570.42 being pay in lieu of notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The claim under the Organisation of Working Time Act, 1997 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)