

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
RP506/2010
MN293/2010
UD318/2010

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 K.T. O'Mahony B.L.

Members: Mr G. Andrews
Mr O. Wills

heard this claim at Tralee on 15th September 2011

Representation:

Claimant: Mr. Martin Corbett, SIPTU, Connolly Hall, Lapp's Quay, Cork

Respondent: Pierce McCarthy Lucy, Solicitors, 9 Ashe Street, Tralee,
Co.Kerry

Dismissal was in dispute in this case

Summary of the Evidence

The respondent started a business in 1988 in the manufacture and installation of kitchen units and doors. The claimant commenced employment with the respondent as a painter in March 2007. He rented a house, beside the respondent's workshop, which was owned by the respondent. The respondent's business was badly affected by the recession; it began to decline in 2007 and by December 2008 he was stretched to keep the remaining employees. From early January 2009 six employees, including the claimant, were put on short-time/part-time, working on average two days per week, as and when work became available.

Claimant's Case

The claimant's position was that his part-time work continued until 8 May 2009 when the respondent stopped giving him work. When the claimant asked the respondent for work he was told there was none. Although the claimant and his son lived beside the respondent's business and his son was called to work, he (the claimant) was not. The claimant's son continued in the employment until July 2009, when he left of his own accord. In July 2009, the claimant gave the respondent one week's notice that he was vacating the rented accommodation and he moved to a nearby town. The claimant requested a letter for Social Welfare from the respondent in August 2009. That letter stated that he no longer had work for the respondent. In November 2009 the claimant requested his P45.

The claimant believed that he was not given work after May 2009 because his wife, who had worked for the respondent's brother had taken a case against him before a Tribunal. She had received notice of the hearing in April 2009 and his work had ceased in May 2009.

Respondent's Case

According to the director (DR) of the respondent company the claimant sometimes walked off the job if there was a difference of opinion about how to do things but would come back a day to two later. When the claimant did not show for work in early May 2009 DR asked his son where he was and he was told he was at home. On further questioning the son DR as to whether the claimant was coming to work the son replied that he did not know. On this occasion he did not pursue the claimant and believed that he would show up again.

Shortly after the claimant left in May 2009 he had to make two employees redundant. DR previously contacted the claimant by telephone but he never contacted him directly after May 2009. He did have the claimant's telephone number but erased it from his mobile after he left the rented house. DR had not replied to letters received from the claimant's trade union because he felt that he had "done nothing out of the way". Nobody had been recruited to replace the claimant. The situation between his brother and the claimant's wife had nothing to do with him.

Determination:

The claimant initially worked for the respondent on a full-time basis. From 5 January 2009 he worked part-time as and when work became available. There is a conflict as to what occurred on 8 May 2009 when the employment terminated. The respondent's position was that the claimant left his employment. The claimant's position was that no work was made available to him as had been the practice even though he lived next door. The respondent's own evidence was that he did not call the claimant after 8 May 2009. Accordingly, the Tribunal finds on the balance of probability that there was a dismissal and that the dismissal was by reason of redundancy. The claim under the Unfair Dismissals Acts 1977 to 2007 fails and the claim under the Redundancy Payments Acts 1967 to 2007 succeeds. The Tribunal awards the claimant a lump sum payment under the Redundancy Payments Acts based on the following criteria:

Date of Birth:	8 July 1951
Date of Commencement:	11 March 2007
Date of Termination	8 May 2009
Gross weekly Wage:	€505.23

The Tribunal finds that the claimant is entitled to two weeks' pay in lieu of notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and accordingly awards him compensation in the amount of €1,010.46

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)