

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE
- *claimant*

CASE NO.
UD2566/2009
RP1944/2009

against

EMPLOYER - *respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr. P. Casey
Mr J. Flavin

heard this claim at Cork on 14th September 2010

Representation:

Claimant: Mr Jan Jaroslaw Potocki, Polish English Translation, "Pilawa", Office 19, 21-23
Oliver Plunkett Street, Cork

Respondent: Mr. Conor O'Connell, Construction Industry Federation, Construction House, 4
Eastgate Avenue, Little Island, Cork

The determination of the Tribunal was as follows:-

Determination

The claimant commenced employment with the respondent on 2 July 2006. The claimant was absent on sick leave from 5 September 2008 and submitted sick certificates to the respondent on a weekly basis but made no other attempt to contact the respondent. By letter dated 25th February 2009 the managing director invited the claimant to the office on 3 March 2009 in order to arrange an appointment with the company doctor. In his letter of reply dated 1 March the claimant indicated that he could not attend for a number of reasons: the doctor was not a vascular-circulatory surgeon, he had problems with his legs and as he was a single father he had no one with whom he could leave his young pre-school daughter. About a week later on 5th March the respondent again wrote to

the claimant inviting him to attend the office on 9th March. By way of reply the claimant re-submitted a copy of his earlier letter with an amended date of 7th March.

On 19th March 2009 the respondent again wrote to the claimant putting him on notice that his employment with the respondent was in jeopardy if he did not attend the company doctor within ten days. The claimant failed to respond to this letter or to attend the company doctor.

The claimant did not make any attempt from the 5th March to the 10th June 2009 to facilitate the respondent's request that he attend the company doctor, even though he attended other appointments outside his home during this period. The respondent assumed that the claimant had abandoned his employment and wrote to the claimant on 10th June 2009 to this effect enclosing his P45.

Determination

Under the claimant's terms and conditions of employment the respondent reserved the right to have him examined by its own appointed doctor. At the end of six month's absence and throughout the following three months the claimant failed to comply with the respondent's request that he see the company doctor. Further, apart from his response of 1st March 2009 and a re-submission of the same response on 7th March 2009 by way of reply to the respondent's two letters he made no contact with the respondent throughout the period from 5 September 2008 and despite the contents of the respondent's letter of 19th March 2009. The Tribunal finds that the claimant resigned from his employment. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 fails. As this was not a redundancy situation the appeal under the Redundancy Payments Acts 1967 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)