

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD1872/2010

MN1826/2010

against
EMPLOYER
under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. B. Glynn
Members: Mr. P. Pierson
Mr. O. Nulty

heard this claim at Longford on 22nd September 2011

Representation:

Claimant: Ms. Brid Mimmagh, Brid Mimmagh & Associates, Solicitors, Church Street, Longford

Respondent: Mr. Frank Gearty, EC Gearty & Co. Solicitor, 4-5 Church Street, Longford

Claimant's case

The claimant commenced employment with the respondent on the 13th October 2008 as a piggery manager. On the 3rd October 2010 the wife of the owner of the piggery met with the claimant in the canteen and handed him a letter informing him that he was being made redundant. She then asked him to leave immediately and informed him that he would be paid one week's wages in lieu of notice. The owner's wife also informed the claimant that his position was to be filled by the owner himself. However the claimant later discovered that he was replaced by someone other than the owner.

Respondent's case

The representative for the respondent submitted that they were an employment agency and therefore entitled to the protection of section 13 of the Unfair Dismissals (amendment) Act, 1993. However having considered the matter, the Tribunal ruled against the respondent on this point.

The witness for the respondent stated that she had been informed, by a director of the respondent that there was no longer a need for a piggery manager and that the claimant was to be made redundant. Subsequent to the claimant being made redundant the piggery employed another person

but the witness was unable to say what capacity this person was engaged in.

Determination

At the outset of the hearing, a preliminary point arose in relation to the status of the respondent, in that the respondent's solicitor informed the Tribunal that they were an employment agency, engaged by Old Road Piggery Limited, and sought the protection of section 13 of the Unfair Dismissals (amendment) Act, 1993. This section states, in short, that where a person agrees with an employment agency to carry out work for a third party, any redress given by an employment appeals tribunal for any matter arising under the Unfair Dismissals Act, 1977 must be against the third party and not the employment agency. In response, the appellant's solicitor stated that her client worked for the respondent and knew nothing about an employment agency. He had no contract of employment and dealt with a director of the respondent directly on all matters. The Tribunal took a short recess to consider the matter and to examine Section 13, which clearly states that an individual dealing with an employment agency must agree that he is dealing with an employment agency, so that that he/she is aware that any work carried out is for a third party and not the agency. This was clearly not the case here, so the Tribunal held against the respondent on this point.

The claimant gave evidence that he was working a normal day when his employer's wife asked to meet him in the canteen whereupon she gave him a letter informing him that he was being made redundant, as her husband was taking over the post. She asked him to leave immediately. Evidence was furnished, by the claimant, that he was unaware that his employer was in difficulties and that a redundancy situation could arise and that the respondent did not engage in talks with him in respect of other options, such as reducing his working week, reducing the claimant's wages or re-employment in another capacity. His evidence was that he would have considered any type of work. Evidence was also given, by both the claimant and the payroll manager, that the claimant's position was filled by a third party.

The evidence furnished at the hearing clearly established that the claimant was unfairly dismissed under the guise of redundancy and the Tribunal finds that the claimant's dismissal was unfair and awards him a sum of €12,800.00 under the Unfair Dismissals Acts, 1977 to 2007.

It was common case that the claimant was paid one weeks wages in lieu of notice and as this meets the requirements of the Minimum Notice and Terms of Employment Acts, 1973 to 2005 the claim under these acts fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____ (CHAIRMAN)