

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - *Claimant*

CASE NO.
MN1939/2010

Against

EMPLOYER - *Respondent*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. B. Kealy
Mr. S. O'Donnell

heard this claim at Dublin on 16th November 2011

Representation:

Claimants(s) : In person

Respondent(s) :

Determination:

Article 38 4 (2) of Bunreacht Na hÉireann states "A member of the Defence Forces not on active service shall not be tried by any court-martial or other military tribunal for an offence cognisable by the civil courts unless such offence is within the jurisdiction of any court-martial or other military tribunal under any law for the enforcement of military discipline".

The claimant made the point that one of the excluded categories from the legislation was a member of the Permanent Defence Forces. The claimant claims that as a member of the Reserve Defence Forces he was not covered by this exclusion. The fact that he was a volunteer and part of the Reserve Defence Forces does not mean that he was not a member of the Permanent Defence Forces. Permanent in this context has a different connotation.

The claimant was discharged from the Reserve Defence Forces by reason of a decision of his commanding officer. The question that the Tribunal must concern itself with is whether the Reserve Defence Forces are part of the Permanent Defence Forces specified in Section 3 (1)(d) of the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The claimant was a volunteer with the Reserve Defence Forces holding the rank of Sergeant. He was under the control and jurisdiction of the Army. The Army is part of the Defence Forces

which incorporates the Naval Service and the Air Corps. All these sections are part of the “Defence Forces” as envisaged by Article 38 (4)(2) of the constitution. The word “permanent” used in Section 3 (1)(d) of the Minimum Notice and Terms of Employment Act, 1973 can only have one meaning because the only defence forces allowable in the state are the Defence Forces as envisaged by the constitution. “Reserve” is in the opinion of the Tribunal meant to describe a part of the Permanent Defence Forces and is in its command structure no different to the other forces of the state.

If The Reserve Defence Forces was outside the Permanent Defence Forces it would be irregular in nature and would be unconstitutional. Therefore the Tribunal deems that the claimant was a member of an excluded category i.e. Section 3 (1)(d) and the Tribunal has no jurisdiction in the matter.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)