EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:	CASE NO.
EMPLOYEE -First claimant (CL1)	UD307/2010 RP498/2010 MN283/2010
and	
EMPLOYEE - Second claimant (CL2)	UD370/2010 RP552/2010 MN342/2010

against

EMPLOYER - Respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. C. Corcoran BL

Members: Mr. J. Reid
Mr. S. O'Donnell

heard this case in Dublin on 9 May 2011

Representation:

Claimants: Ms. Barbara Mebtouche, Triana,
Independent Advice & Information Bureau,
13 Store Street, Dublin 1

Respondent: Ms. Ailionora McMahon BL instructed by
Patrick C. Markey & Co., Solicitors,
Quay Street, Drogheda, Co. Louth

The determination of the Tribunal was as follows:-

At the commencement of the hearing the claimants' representative stated that the claimants (who were brothers) would only be proceeding under redundancy legislation. The claims lodged under other legislation were not prosecuted.

The two claimant Polish stonemasons (hereinafter referred to as CL1 and CL2) commenced employment with respondent at the end of July 2006 but the employment ended in early November 2009. Although the employer (hereafter referred to as RM) was now living in Australia the barrister appearing on his behalf stated that redundancy was disputed in respect of both claimants on the grounds that their dismissal was not due to redundancy.

Giving sworn testimony through an interpreter, CL1 said that at the beginning of November 2009 he and CL2 returned from leave in Poland. They met RM's brother and they were told that there was no work for them. The next day they did not go to work but phoned RM who said there was no work for them. They consulted RM's foreman who said that RM had phoned him and had said that there was no work for the claimants.

The Tribunal was furnished with a copy of flight documentation regarding a flight from Dublin to Poland in late October 2009 and a return flight in early November 2009. It was claimed that this leave had been agreed with RM. However, when RM was asked for a redundancy payment after the claimant 's return no such payment was made on the grounds that RM had no money.

CL1 denied that he had ever received verbal or written warnings from RM, that he had ever been late for work or that he had refused to work with Irish labourers. He said that he had been entitled to twenty-one days' leave per year but that RM had never stuck to this.

Asked if he had ever conducted an unofficial strike, CL1 replied that RM had owed the money for three or four weeks' work and that it was not possible to work without money.

It was put to CL1 that MC (a witness for RM) had worked five days per week where CL1 had worked and could give contrary testimony CL1 replied that MC had only worked where CL1 had worked for perhaps one month and had not known what was happening there.

CL1 was now told by RM's representative that MC could say that the required minimum amount of work was being done. CL1 replied by stating that MC was not a stone specialist and queried whether or not MC was a stonemason.

Asked if he had refused to work with MC, CL1 denied this and said that he had liked working with MC. Asked if disciplinary matters had been discussed in October 2009, CL1 replied that the hours had been discussed at length and that some overtime had not been paid. He did not deny that he himself had owed money to RM but said that he had paid it back. He said that he and RM had lent each other money, that RM had been a good employer and that they had respected each other.

It was put to CL1 that he had taken more than the permitted twenty-one days' leave but he replied that it had been RM's idea that one group of employees could go while another group would stay. Also, CL1 had worked some days in lieu. He claimed that he had been given permission by RM to go on holidays. CL1 did not reply when it was put to him that MC could say that MC had only got twenty-one days' leave. CL1 claimed that he had had permission to take holidays but that when hereturned he was told that there was no work for him.

Giving sworn testimony also through an interpreter, the second claimant (hereafter referred to as CL2)

said that his employment had started on the same day (31 July 2006) as his brother, CL1. CL2 also claimed to have received verbal authorisation for his holidays. He stated that RM's practice was to allow (in consultation with RM) longer holidays. CL2 claimed to have worked through his standardsummer holidays. However, after he returned to Ireland he was told that there was no work for him.Regarding a redundancy payment he was told that there was no money. He claimed entitlement to aredundancy award.

CL2 stated that RM was a good employer but had not wanted to pay and that other employees had also gone unpaid even if MC might testify that he (MC) was paid. CL2 stated that twenty-one days' leave was also the norm in Poland. The main issue that CL had concerned money.

Regarding the end of his employment, CL2 stated to the Tribunal that he was told that there was no more work for him. Asked how he had known not to go in for work, he replied that they had phoned the foreman who had said not to go to work again and that the next day RM would settle up everything.

CL2 denied that RM had ever complained to him about lateness and denied ever having been late. It was put to him that he had refused to work with Irish workers. He replied to this (through the Tribunal's interpreter) by saying that the helper could not be lighter than the stone because then he (CL2) would be the person doing all the work. When it was put to him that the practice was that astonemason worked with a labourer he replied that he had worked with a Jamaican. CL2 told theTribunal that he had made a complaint but had not refused to work. He denied that he had everreceived a complaint about the level of his own work.

CL2 stated that he had never received written terms and conditions of employment. RM's representative stated that she did not have a copy of a contract and that it had been hard to get all the documents (given that RM had gone to Australia).

In clarification for the Tribunal CL2 stated that no other people had been let go on the same day as CL1 and CL2.

The Australian-based RM who was the respondent in this case was not present to contest the evidence as tendered by the claimants in these proceedings. However, RM's representative told the Tribunal that RM had asked his mother to attend. The Tribunal did not ask for testimony from RM's mother, as she was not involved directly in the running of the business.

Giving sworn testimony, MC told the Tribunal that he had been just a worker for RM but had overseen some jobs. MC's employment had started in January 2009 but had ended in October 2010 when "the work dried up".

MC admitted to having got warnings for being late but found RM "a fair employer". Regarding the twenty-one days' holidays, MC said that it was okay to take one day over that but not more.

MC stated that he had been a general labourer to more qualified stonemasons and that he had had difficulties with some stonemasons who would not work with the Irish and were not getting paid to train in stonemasons. The target amount of work for a stonemason was some five or six square metres per day. They did not help out others after that. MC stated to the Tribunal that he was always paid but they would go to work on the same bus so that if one was late all would be late. Sometimes he travelled alone and might be late. MC did admit to having received a written warning from RM during his employment. He could not recall getting a written contract.

Speaking of the work, MC said that it was sometimes bad and sometimes very good. The trades were hit by a slowdown. After the claimants were let go there were "bits to finish off" and "small jobs" until MC's own employment ended. The claimants were the first to end but others were laid off a couple of months after that.

In a closing submission, respondent's representative argued that the onus was on the claimants to show redundancy and that the onus had not been discharged even if respondent had not been present at the Tribunal hearing. Also, she stated that she had an objection on the grounds that work had been done in Belfast and therefore outside the jurisdiction of the Tribunal.

Determination:
The claims under the Unfair Dismissals Acts, 1977 to 2007, and under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fall for want of prosecution.

Regarding redundancy, the Tribunal considered all it had heard. It was satisfied that the claimants, at a time of general downturn in their industry, were told that there was no work for them.

Under the Redundancy Payments Acts, 1967 to 2007, the Tribunal, on the evidence adduced, unanimously finds that the first claimant (CL1) is entitled to a redundancy lump sum based on the following details:

Date of birth:	23 September 1975
Date of commencement:	31 July 2006
Date termination:	02 November 2009
Gross weekly pay:	€463.00

Under the Redundancy Payments Acts, 1967 to 2007, the Tribunal, on the evidence adduced, unanimously finds that the second claimant (CL2) is entitled to a redundancy lump sum based on the following details:

Date of birth:	04 June 1966
Date of commencement:	31 July 2006
Date termination:	02 November 2009
Gross weekly pay:	€463.00

These awards are made subject to the claimants having been in insurable employment during the relevant period.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)