

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD1096/2010
RP1515/2010
MN1061/2010

against

EMPLOYER

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: Ms. K.T. O'Mahony BL

Members: Mr. P. Casey
Ms. P. Doyle

heard this case in Cork on 26 October 2011

Representation:

Claimant(s):

Mr. Diarmuid Enright, UCATT Ireland, Cork District Office,
Carpenters Hall, 6 Father Matthew Quay, Cork

Respondent(s):

No legal representation

The determination of the Tribunal was as follows:-

Only the claims under the Redundancy Payments Acts and the Minimum Notice and Terms of Employment Acts were pursued at the hearing before the Tribunal.

Summary of Evidence

The appellant, a carpenter and joiner, commenced employment with the respondent (a construction employment agency) on 22 August 2006. He claimed that he was last rostered for work on 24 July 2009. He was given notice of his dismissal on 23 February 2010.

The respondent's position was that the appellant had declined some numerous assignments in the period from April of 2009 to January of 2010. These included an assignment in Mallow in late August 2010, which was not far from the appellant's home. He declined it on the grounds that the respondent could not guarantee him a week's work there. The respondent informed him that it could never guarantee the duration of an assignment because that is within the client's rather than the respondent's control. The respondent explained to him that a client would normally request a tradesman for a few days to see how they got on before giving any indication as to the length of the engagement for the particular worker; he might only be needed for a few days or he could be retained with the client for up to one or more years. However, the appellant was not satisfied by the respondent's rationale and turned down the work. As it turned out, the two carpenters sent to the Mallow site on that occasion remained on the job for 8 days. Subsequently, the respondent informed the appellant in writing that, if he kept refusing what the respondent considered to be reasonable offers of work, he would have no option but to assume that he had ended his employment with the respondent and to issue him with his P45.

In early September the appellant turned down an offer of work on the Waterford bypass and in early October 2009 he similarly turned down an offer of work in Nenagh because both were too far away. Later in October CM left a message for the appellant about carpentry work in Cork City but the job was gone when he rang back three hours later. CM explained to the Tribunal that any delay could result in a competitor quickly getting a man to the site in question

The appellant also turned down job(s) in Wexford and/or New Ross towards the end of October but CM accepted that these were "no small journeys". On 30 October 2009, the respondent had to send another carpenter to a client because the client's foreman had not wanted the appellant back (on the grounds that the appellant was too inflexible in terms of the work he was willing to do, too contrary and too awkward to work with). In late November 2009 he turned down an offer of carpentry work in Limerick because it was too far away.

CM accepted that his asking the appellant to go to Castletownbere the time of the snow when another carpenter had let him down; however, given its distance from where the appellant was living CM acknowledged that it had been "a big ask". CM's view was that men prefer to be offered a job even if they refuse it. The appellant had complained to the respondent's Dublin office that CM was harassing him by offering him jobs that were too far away and to which it would be dangerous to travel. The appellant thought it "highly coincidental" that CM was offering him work during the time of the flooding when CM knew that it would not be safe for the appellant to travel to such assignments. DW (a director of the respondent at the time) explained to the appellant that it was precisely because of the floods and the flood damage that the respondent was able to offer him work and to get over twenty men back to

work. The

appellant queried whether DW knew how dangerous it was for people to travel the roads at times of floods. CM pointed out that, some men who subsequently took the assignment got six months' work due to the floods.

On 25 January the appellant asked for "a loan" of his P45 for his mortgage insurance purposes'. CM explained to him that an employer could not "loan" a P45, that it was a legal document carrying certain ramifications and asked him to put his request in writing. In his letter of request the appellant made clear that the P45 was for mortgage payments insurance purposes, that once the insurance company had made a copy of it that he would return it to the respondent as he wanted to remain on its books. The respondent issued the appellant with his P45 on 26 January 2009 and refused to take it back'. In an exchange of correspondence between the parties, addressing the issue that had arisen about the P45 the appellant indicated to the respondent that he would not have asked for his P45 if it meant he would be taken off the respondent's books. In his response CM indicated the appellant: "...we aim to get you back with us as soon as possible". CM maintained that in asking for his P45 the appellant had resigned and had not been made redundant by the respondent. The appellant was not offered any work thereafter.

The respondent believed that the appellant was no longer interested in working for it, that he only wanted a redundancy lump sum and that this was why he no longer made himself available for work.

The appellant's confirmed in his evidence that some of the work offered to him was too far away but the respondent would not pay travel and lodge. He had been offered jobs when the weather conditions (snow and flooding) made the road conditions very dangerous. He refused offers to work as a labourer or tiler because he was a carpenter by trade. If he were to take a job offer for just for two days he would have to wait thirteen weeks for social welfare payments to kick in again. The appellant confirmed that he believed that CM in making unreasonable offers of work was harassing him and he reported this to the respondent's Dublin office. CM was annoyed about that and told him he should get on to him and not to Dublin.

Determination:

The Tribunal does not accept the respondent's position that in seeking his P45 the appellant had resigned from his employment. The appellant had informed the respondent specified that that he wanted the P45 for mortgage protection purposes, which was a reasonable request and not to terminate his employment.

Subsequent to having been let off on 24 July 2008 several offers of work had been made to the appellant. Having considered the Tribunal finds that the appellant was not unreasonable in not taking up those offers of employment for the reasons given by him, as set out in the summary of evidence herein. Accordingly, the Tribunal awards the appellant a redundancy lump sum

payment under the Redundancy Payments Acts, 1967 to 2007 based on the following details:

Date of Birth:	19 November 1952
Employment commenced:	22 August 2006
Employment ended:	24 July 2009
Gross weekly pay	€1,023.00

This award is based on the appellant having been in insurable employment during the relevant period under the Social Welfare Acts.

It should be noted that payments from the Social Insurance Fund are limited to a maximum of €600.00 per week.

Allowing the claim lodged under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, the Tribunal awards the appellant the sum of €2,046.00 (this amount being equivalent to two weeks' gross pay at €1,023.00 per week).

The claim under the Unfair Dismissals Acts, 1977 to 2007 is dismissed the, for want of prosecution.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

