

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD1850/2010
MN1804/2010
RP2486/2010

against

EMPLOYER

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C. Corcoran B.L.

Members: Mr F. Cunneen
Mr. J. Dorney

heard this claim at Dublin on 3rd February 2012

Representation:

Claimant: Mr. Blazej Nowak, Polish Consultancy Enterprise, 107 Amiens Street, Dublin 1

Respondent: Mr Warren Parkes, Warren Parkes, Solicitors, Unit 1, The Capel Building,
Mary's Abbey, Dublin 7

The determination of the Tribunal was as follows:

The respondent recruits personnel mainly for the construction industry and contract these personnel out to their clients. While the respondent pays the personnel, they are under the supervision of their clients.

The claimant commenced employment in December 2007 as a general operative and was assigned to a number of different sites before he commenced on the M50 site in February 2008. It was the claimant's case that in June 2008 the foreman on this site informed him that there was no work available for him and that he would have to let him go. The respondent's position was that they understood that the claimant had left them. They were only aware that the claimant was no longer on the site when he was not included in the timesheets returned by their client. They issued his P45 approximately two weeks later this was dated 6th June 2008. The respondent's witness further explained that there was no downturn in staff on the M50 in 2008; numbers on this site were increasing into 2009.

The claimant returned to work on the M50 site in October 2008 on foot of a telephone call he received from the foreman not from the respondent. He worked on this site up until May 2010 when the foreman informed him that there was no more work available to him. His P45 indicated a date of termination of the 4th June 2010. During the four month period that he was not working on the M50 he was “employed by private jobs in private sites”. The respondent realised that the claimant was back working for them when they saw his name on the timesheets submitted by their client, so they set him up as a new employee on their system. The respondent was informed by the foreman that he was finishing up the claimant and that the claimant would contact them.

It is the practise within the respondent when their employees are informed that there is no work available to them on the site on which they are working, the individual employees contact their office to seek alternative work with them. The claimant confirmed he had telephoned the respondent once seeking alternative work when he finished on the site in May 2010.

Determination

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal prefer the evidence of the respondent and heard insufficient evidence from the claimant in respect of his claims. Accordingly the Tribunal dismiss the claims under the Unfair Dismissals Acts, 1977 to 2007, the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)