

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE

CASE NO.  
UD1441/2010  
RP1959/2010

Against

EMPLOYER  
under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr G. Hanlon

Members: Mr P. Pierson  
Ms A. Moore

heard this claim at Cavan on 3rd February 2012

Representation:

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Claimant: Mr Alan Crossan, Garrett J Fortune & Co, Solicitors, 11 Church View, Cavan

Respondent: Steen O'Reilly, Solicitors, 31/34 Trimgate Street, Navan, Co Meath

#### **The determination of the Tribunal was as follows:-**

The appeal under the Redundancy Payments Acts, 1967 to 2007 was withdrawn at the outset of this hearing.

#### **Respondents Case:**

MB gave evidence that he had known the claimant for a long time, they had trained together and were friends. He initially gave the claimant DK a job in 1998/1999 and he remained in the employment until he went to Australia giving the respondent only a few days notice.

In 2006 MB received a phone call from DK asking for work and MB took him back on the books. It was a good relationship and DK was a good worker. In September 2009 the construction industry was in trouble and MB's business was like all others.

MB did not want to lay people off and thought that if everybody took a pay-cut he could stay in business and keep his employees.

Around this time the claimant's attitude changed, he blamed MB for all sorts of things and said he "wouldn't be around much longer".

On 22<sup>nd</sup> December the claimant told the mother of MB that "he'd had enough and he was leaving". MB received a few horrible texts after that date but that was all. Work resumed on site on the 11<sup>th</sup> January 2010. The delay in re-starting was due to bad weather. The claimant never showed up.

Under cross examination MB said that a pay cut was applied across the board in September 2009. One or two people were not happy with it but they agreed. The claimant was very disgruntled. Asked about contact after the Christmas period MB stated that he only lived a half a mile away from the claimant, he could have called anytime. Everybody knew that because of the weather they could not work.

MB got a text from the claimant saying that he would be better off on the dole.

Asked about a letter issued to the claimant MB agreed that it was given to the claimant but at his request and for the Social Welfare office.

EB mother of the respondent stated that the claimant came into the office and advised her that he was leaving. He asked for her help with filling out forms for to claim tax back and she helped him. EB gave him a cheque dated 18<sup>th</sup> December and a final one on 22<sup>nd</sup> December.

The claimant requested a letter for either Social Welfare or his Credit Union and she did one up for him.

EB said that she was unsure of dates that he called to her. DK was a friend of the family, he often had dinner with them and she didn't think she would need to watch her back with him.

**Claimant's case:**

The claimant DK stated that he took a pay cut in September 2009. Everything was as normal and there was plenty of work. At Christmas he got his usual pay and a bonus. He was told to report for work in the New Year. DK tried to make contact with the respondent after Christmas, he rang his mobile and tried a few sites but couldn't make contact.

He called to the respondent's mother and she told him there was no work for him. He asked for weeks wages in advance but was told no. A letter was produced to him and he was asked to sign it.

DK went back a second time to MBs mother and got a letter for his Credit Union.

He did not leave his job and ended up getting legal advice because he didn't know what else to do.

DK eventually got another job working for his brother in law in Limerick.

**Determination:**

The Tribunal finds that the claimant has failed to prove that he was dismissed and determines that the claim under the Unfair Dismissals Acts fails. The Tribunal is influenced by the strong conflict of evidence between the claimant and (MB) for the respondent in relation to the circumstances surrounding the claimant's cessation of employment.

In the claimant's claim that he was dismissed the Tribunal prefer the evidence of the respondent and therefore the claim under the Unfair Dismissals Acts fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

