

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

-claimant 1

CASE NO.
UD1243/2010
RP1664/2010
MN1180/2010
WT507/2010

EMPLOYEE

-claimant 2

UD1244/2010
RP1665/2010
MN1181/2010
WT508/2010

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
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr N. Russell

Members: Mr J. Browne
Ms S. Kelly

heard this claim at Waterford on 5th December 2011

Representation:

Claimant: Ms Aisling Cahill, Aisling Cahill & Co, Solicitors, 1st Floor,
86 O'Connell Street, Dungarvan, Co Waterford

Respondent: Mr. Gerry McCullagh, McCullagh Higgins & Co., Solicitors, 1 - 2 Cois Mara,
Dungarvan, Co. Waterford

Claimant's Case

Claimant 1 gave sworn evidence through an interpreter. The claimant commenced employment on the 27th of August 2007 with the respondent which is in the construction business. The claimant did a variety of work; laying concrete, construction, driving etc. Claimant 2 was already in employment when claimant 1 commenced but an additional employee (cousin of the respondent owner) commenced after both claimants. Work was scarce from March 2009. The claimant had been put on short-time previously by the respondent and was given the appropriate RP9 forms.

In 2009 the claimant's hours were reduced; some weeks were full-time and some reduced hours. He was on short-time from the 23rd of October but was under the impression that there was 'a big job coming up.' In December 2009, two weeks before the Christmas holidays the respondent informed the claimant that there was no more work available after the holidays. The claimant had intended coming back to Ireland and continuing to work after the Christmas holidays. He went home every year for the holidays and returned. Consequently the claimant had to apply for job seekers allowance which he received in January, he needed his P45 to do this. The claimant mentioned redundancy to the respondent in December and was told they would discuss it 'later.' In 2010 in relation to redundancy the respondent said they were 'handling similar issues' and 'you'd be dealt with.' The respondent never disputed the claimant's right to redundancy, just kept putting him off every time he contacted them.

In April 2010 the claimant attended his local Citizens Information Centre, where he was given the redundancy forms for his employer to complete. He gave the respondent the RP50 form and the forms to say they were unable to pay the redundancy. The respondent refused to sign the redundancy forms. As the claimant could not find employment he left Ireland in the summer of 2010.

The claimant received two weeks holidays in August 2009. He does not recall receiving €1,000.00 on the 10th of December 2009. He did receive €550.00 on the 4th of December. The claimant received a reference from the respondent stating he had been let go as there was no work available for him. The claimant did not receive his notice entitlement.

Claimant 2 gave sworn evidence through an interpreter. The claimant commenced employment in November 2006. All the employees were doing the same jobs. The claimant had a number of weeks on short time. In December 2009 he was approached by the respondent and told there would be no more work after this week. The claimant was informed on Monday that his employment would be ending on Friday. On Wednesday the claimant requested to finish a day early in order to sort everything out with Social Welfare so his family might have some money for Christmas. The respondent met with the claimant the following day (17th of December) and gave him €1,100.00 and his P45. The claimant did not say that his wife was looking for work in a hotel; she had just had a baby so would not be working. The claimant received two weeksholidays in August 2009.

Claimant 2 accompanied claimant 1 to both the Citizens Information Centre and on the visits to the respondent regarding their redundancy. The respondent did not pay tax for claimant 2 in 2006, 2007 & 2008.

Respondent's Case

One of the respondent directors (SK) gave evidence. The respondent was expecting a big contract to begin in April 2009 that would provide 14 months work. The contract was delayed and as the respondent didn't take any additional work on, the working hours were reduced from November 2009. This witness was informed by (TK) that there was a problem with claimant 1, that he was looking for his P45 as he was returning to Poland. SK had told the claimant's that work would be quiet for January and February. On the 7th of December claimant 1 said he was returning to Poland until the end of January as he didn't want to work a 3-day week. SK said he was sorry to see him go and that if he returns to Ireland and there is work available he will give him back 'his job'.

Claimant 2 was informed that he would be on a 3-day week after Christmas. In response he said that his wife was applying for a job in a nightclub and that it would not be worth his while working as they would need a childminder. Claimant 2 said 'leave it with me', which they did until the 16th of December. SK asked if his wife got the job, he said no but was still undecided whether he was staying in employment with the respondent or not. SK told him to make up his mind and that he had to give notice in writing if he was leaving. The following morning claimant 2 did not appear for work, SK then received the phone call from TK informing him that claimant 2 had left his employment.

This witness has no recollection of tax not being paid for claimant 2. SK is satisfied that the claimant's resigned from their employment. SK did not have work for the claimant's before April 2010.

The respondent manager (TK) gave evidence. In early December, two days before claimant 1 left, claimant 2 approached TK and asked him to organise claimant 1's P45 and documentation as he was returning to Poland. TK then gave him his documentation and all monies outstanding i.e. wages and holidays. In late December claimant 2 came to TK's house and said he could not do a 3-day week so had to leave his employment.

TK met the claimant's in February when they produced the redundancy forms. TK accepted the forms and said he would look at them. The respondent's accountant informed TK that if the claimant's resigned they are not entitled to a redundancy payment. The claimant's approached TK again with the redundancy forms declaring the respondent's inability to pay, again TK refused to sign them as they had resigned. The references were given to the claimant's without them requesting them.

Determination

The Tribunal find that a genuine redundancy situation existed within the respondent. The Tribunal finds that the appeal under the Redundancy Payment Acts 1967 to 2007 succeeds and makes awards based on the following;

Claimant 1

Date of Birth:	24th of December 1975
Employment Commenced:	27th August 2007
Employment Ended:	8th December 2009
Gross:	€550.00

Claimant 2

Date of Birth:	23rd January 1985
Employment Commenced:	13th November 2006
Employment Ended:	17th December 2009
Gross:	€550.00

As the appeals under the redundancy Payment Acts 1967 to 2007 succeeds the claims under the Unfair Dismissals Acts are dismissed.

The claims under the Minimum Notice and Terms of Employment Acts succeed and claimant 1 is awarded €1,100.00, being the equivalent to two weeks' pay in lieu of notice and claimant 2 is

awarded €1,100.00 being the equivalent to two weeks' pay in lieu of notice.

The claims under the Organisation of Working Time Act 1997 are dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)