

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD823/2010

RP1119/2010

MN782/2010

Against

EMPLOYER

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. C. Egan B.L.

Members: Mr. D. Morrison
Mr. M. McGarry

heard this claim at Castlebar on 18th October 2011

Representation:

Claimant:

Mr John Gordon, John J Gordon & Son, Solicitors, John Street, Ballina, Co Mayo

Respondent:

Mr. Paul Dunne, IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

As dismissal was in dispute the claimant gave evidence first.

Claimant's case

The claimant stated that he was employed as a construction operative with the respondent since 20th May 1994. In 2006 the claimant separated from his wife and maintained custody of their three children. He found it difficult to cope with the combination of child minding and work, and in order to facilitate him the respondent agreed that he could work in the Ballina area, where he was living, insofar as it was possible. The claimant moved from site to site around Ballina town, occasionally working in Castlebar and Enniscrone.

The claimant worked hard and there were no complaints regarding his workmanship or time keeping.

In December 2009, the claimant, while working on a site in Ballina, was asked to go to work in Belmullet for the day on Monday 7th December 2009. The claimant duly went to Belmullet. The foreman asked him to return to Belmullet on the following day, but the claimant informed the respondent that he would not be able to work there in future due to the difficulty in getting public transport that would get him there on time. Subsequently, the claimant went back to Ballina, working in Pearse Street, removing scaffolding. He worked the following four days in Ballina, but was subsequently informed by text message, followed by a letter from the respondent, that there would be no more work until further notice. The claimant considered this to be notice of termination of his employment and considered himself to be unemployed. He sought advice at the Social Welfare Office. He subsequently went to the respondent's office seeking a letter showing that he was unemployed. This was not forthcoming. He received holiday pay up until the end of the year. The claimant stated that he did not know if he was dismissed or made redundant, and hence his claims under both the Redundancy Payments Acts and the Unfair Dismissals Acts.

The claimant did not receive any notice of termination of employment, nor did he receive payment in lieu of any such notice.

Respondent's case

The manager (BB) of the respondent company gave evidence. He stated that he never terminated the employment of the claimant. He was aware of the claimant's personal circumstance and facilitated him as much as he could by providing him with work in Ballina. However, when there was no work in Ballina, the respondent requested the claimant to work elsewhere. At the period of time in question, there was "nobody left in Ballina apart from the office staff". From the 7th December 2009 the claimant was required to work in Belmullet. However, this was not to be a permanent move and work became available again in Ballina.

The claimant, through his solicitor, had requested a redundancy payment. The respondent had not made any employee redundant. The respondent was also informed that any further contact between himself and the claimant should go through the claimant's solicitor.

The respondent informed the Tribunal that the claimant's job was still there for him and that he could return to work if he so wished.

Determination

The fact of the dismissal was at issue in this case. The Tribunal, having carefully considered all the evidence, finds that the claimant has failed to convince the Tribunal that he was dismissed. The evidence of the respondent was that the claimant's job is still available to him if he wishes to return to work. Therefore, the claims under the Unfair Dismissals Acts, 1977 to 2007 and the claim under the Redundancy Payments Acts, 1967 to 2007 both fail.

As there was no termination of employment, there was no requirement for notification of termination of

employment, and therefore the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)