

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

UD411/2011

CASE NO.

MN397/2011

Against

EMPLOYER 1
EMPLOYER 2

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Meghen

Members: Mr G. Andrews
Mr D. Mcevoy

heard this claim at Limerick on 28th March 2012

Representation:

Claimant: Ms. Rose Wrenn, Limerick Citizens Information Service, 54
Catherine Street, Limerick

Respondent: In person

The determination of the Tribunal was as follows:-

Claimant's case:

The claimant LS gave evidence that he began working for in respondent in 2007. Employment was uneventful until the evening of 23rd October 2009 when he went to his doctor and received a medical certificate. His wife gave the certificate to the respondent the following week. His employer enquired when he might be fit to resume and asked for 3 days notice of his return. He was asked to return keys by the wife of the respondent and received his P45 a few days later. On receipt of the P45 LS went to his local Citizens Information Centre, they made contact with the employer and were told that Social Welfare had advised them to let him go and issue a P45.

LS received a letter from the respondent 10 days later stating that there was a misunderstanding and that the P45 was issued in error.

Under cross examination he stated that he did not contact the employer on receipt of the P45, he went to Citizens Information. He did not continue to send medical certificates to his employer but was on sick leave for over one year.

Respondent's case:

AH wife of the owner of the respondent company told the Tribunal that she received a letter from Social Welfare on 12th November advising that the claimant wished to claim benefit while on sick leave. As the respondent did not pay sick pay she thought it only fair to allow him to claim illness benefit and asked her accountant to issue a P45. Her accountant later advised her that this was incorrect so she wrote to the claimant advising him of the mistake and that his job was still there for him. The respondent received a reply from the claimant advising that it would be uncomfortable to continue working for them and mentioned compensation.

Under cross examination AH advised the Tribunal that they only ever received one medical certificate from the claimant for a period of one week.

PK accountant for the respondent said that a P45 issued to the claimant dated 19th November 2009. The only reason it issued was because the respondent wanted him to be able to claim his benefit. The P45 was never sent to Revenue and the claimant is probable still listed as an employee. He found the circumstances the respondent now found himself in as extraordinary and couldn't understand why there was conflict.

Determination

The Tribunal unanimously find that based on the evidence as presented, the claim for Unfair Dismissal and Minimum Notice and Terms of Employment must fail.

It was accepted by all that the issuing of the P45 was an error.

The claimant was advised of the error but failed to adequately engage with the employer.

In the circumstances, the Tribunal finds that no dismissal of the Claimant occurred and accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 and the Terms of Employment Acts 1973 to 2005 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

