

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *claimant*

RP1550/2010
UD1131/2010
WT471/2010

against

MN1097/2010

EMPLOYER - *respondent*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney BL

Members: Mr T. Gill
Ms H. Henry

heard this claim at Galway on 13th March 2012

Representation:

Claimant(s) : RDJ Glynn, Solicitors, Aengus House,
Long Walk, Galway

Respondent(s) : Peninsula Business Services (Ireland) Limited, Unit 3,
Ground Floor, Block S, East Point Business Park, Dublin 3

The claim under the Unfair Dismissals Acts 1977 to 2007 was withdrawn by the claimant's representative at the commencement of the hearing.

Claimant's Case

The claimant gave direct evidence that he commenced working for the respondent company in April 1993. He was almost 56 years old at that time and was employed by the respondent company as a truck driver. He was not given any terms or conditions of employment but enjoyed a good working relationship with his employer. From November 2001 until March 2002 he took a period of leave to care for his wife who was ill at that time and his employer was

supportive of him during this period. He returned to work in March 2002 and continued working as a truck driver.

In February 2008 he requested further time off to take care of his wife whose illness had re-occurred. The owner of the business known as (PN) agreed to this request and told him to take whatever time it takes. He was over 70 years old at this time and there were no discussions about his retirement. He retained keys to the respondent's offices and yard gate and also retained his protective clothing. He understood that his job would be there for him to return to if he wished. He accepted that he was issued with a P45 form at that time and the date of cessation on the P45 was 29 February 2008. He gave evidence that the then financial controller known as (MH) told him that the P45 was issued for Social Welfare purposes. He returned to work in November 2008 following his wife's death and continued in employment until January 2010 when he was made redundant. He gave further evidence that he did not receive payment for accrued annual leave when his employment was terminated.

Under cross examination he denied that he told (PN) in February 2008 that he wanted to retire. He did not have a discussion with (AMcM) who worked in the payroll department about leaving his job. He accepted that in February 2008 he could not give an indication as to how long he would be absent from work. He expected the respondent to keep his job open indefinitely. Following his return to work in November 2008 he worked less hours than he had done heretofore. From November 2008 until the termination of his employment in January 2010 he generally worked 3 days per week but on occasions he worked 5 days per week.

Respondent's Case

The Managing Director of the respondent company (PN) gave evidence that the claimant requested a period of time off work in 2001 to take care of his wife. The company assisted the claimant in this regard and the claimant was paid in full for this period of time off work. In February 2008 the claimant approached him (the witness) and said that he needed to retire as he wanted to take care of his wife. The claimant was issued with a P45 at that time. The company did not hold a retirement party at that time because it was not felt appropriate to do so. Following his wife's death the claimant approached the witness seeking to return to work for a few days per week to keep himself occupied. The witness agreed to this as he enjoyed a good relationship with the claimant, who had always been a good employee. The claimant returned to work in November 2008 generally working 3 days per week. In January 2010 the company made 7 employees redundant. The selection process used was a last in first out basis and the claimant was selected for redundancy as part of that process.

Under cross examination he accepted that the company does not have a written contract of employment with any of its employees and no retirement age exists within the company. He stated that the claimant was issued with a P45 in February 2008 and his re-entry into employment was on a temporary basis. He could not recall saying to the claimant to take off whatever time it takes and he was not aware of any discussion that the claimant had with the then financial controller (MH).

The Tribunal heard further evidence from the current financial controller (MN) and from (AMcM) that it was their understanding that the claimant had retired in February 2008. The claimant was paid his minimum notice and annual leave entitlements. He was also replaced in his position as a truck driver in February 2008. (AMcM) gave evidence that she compiled the claimant's P45 in February 2008 and gave it to him. She wished him good luck and she also

forwarded a copy of the P45 to the Revenue Commissioners. She understood that he was retiring and no reference was made to the P45 being issued for Social Welfare purposes. When he returned to work in November 2008 he was set up as a new employee on the payroll and in February 2009 was issued with a new P60 form.

Witness (CC), an employee of an oil company who supplied diesel to the respondent company on a regular basis gave evidence that the claimant described himself as the busiest retired man in Ireland during a conversation he had with the claimant. He could not recall the exact date of the conversation.

Determination

After carefully considering the evidence tendered and legal submissions offered by the parties legal representatives the Tribunal makes the following findings of fact:

That the claimant retired in or about the 29 February 2008. His P45 was provided to him in the usual way on leaving employment. It was not provided for Social Welfare circumstances. The claimant returned in November 2008 under a different employee number and different terms. The company employed a new driver replacing the claimant in February 2008 when he retired.

Based on the foregoing the claim under the Redundancy Payments Acts 1967 to 2007 fails. Furthermore the Tribunal determines that the claimant was paid his holiday entitlements for 2010 and the claim under the Organisation of Working Time Act 1997 fails. The Tribunal also finds that the claimant was paid the appropriate amount of notice and 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)

