

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE -*Claimant*

CASE NO.
UD913/2010
MN865/2010

against
EMPLOYER -*Respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr R. Murphy
 Ms M. Maher

heard this claim at Dublin on 3rd February 2012

Representation:

Claimant: Ms. Lisa Maher B.L. instructed by Eirinn McKiernan & Co, Solicitors,
 11 Ashe Street, Cavan

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

The determination of the Tribunal was as follows:

Preliminary Issue:

The claimant gave evidence with the assistance of a Tribunal appointed translator.

The claimant commenced his employment with the respondent company in September 2007.

It was the claimant's case that he was absent on sick leave from October 2008 due to an injury and that he regularly submitted medical certificates to the company's accounts department. It was the claimant's evidence that in or around April or May 2009, a director of the company told the claimant that he did not need to continue to submit medical certificates and could return to work once he had recovered.

The claimant was informed by his doctor in or around June 2009 that his injury was serious and that he should consider applying for disability benefit. In July 2009 the claimant brought the forms to the company for the relevant section to be completed. It was the claimant's case that one of the director's had signed this form on behalf of the company.

It was the claimant's evidence that when he brought the envelope of documents to the social welfare office in September, he discovered his P45 in the middle of the form. The P45 showed a date of termination of January 2009. The claimant raised this in the company with the office staff who told him that, "this happens all the time." The claimant did not take action regarding the dismissal until January 2010 when he attended a solicitor, as he was concentrating on seeking alternative work. The claimant refuted that he had received any letters or telephone calls from the company during November, December and January.

It was the claimant's case that the dismissal was not communicated and therefore could not be considered a dismissal. The claimant subsequently filed form T1A with the Tribunal on 25 March 2010. Representation for the claimant submitted that the date of dismissal was a date towards the end of September 2009 and therefore the claim was within the stipulated time limit. In the event that the Tribunal accepted the dismissal to have occurred in July when the claimant collected the paperwork, representation on his behalf submitted that exceptional circumstances applied to extend the time limit for a claim under the Acts. It was also submitted that the claimant was owed minimum notice as the last payment he received from the company was on 13 October 2008. Documentary evidence in support of this was submitted to the Tribunal.

It was the respondent's case that the claimant was absent from the end of October 2008. His colleagues informed one of the directors that the claimant was absent due to an injury. The company requested medical certification but despite this it received only one medical certificate from the claimant and this certificate was undated, unstamped and contained grammatical errors. In addition to the non-receipt of medical certificates, no contact was received from the claimant. The company attempted to contact the claimant by telephone and in writing during the three months that followed.

No contact was received from the claimant and the company subsequently wrote a letter of dismissal to him dated 5 January 2009. A P45 was enclosed with the letter. Representation for the company submitted that the claim was therefore outside the stipulated time period as specified by the Acts.

The director of the company refuted in evidence that the signature on the social welfare form belonged to a member of staff and he stated that there was no such position of Financial Manager in the company as stated on the form. He also noted that all of the company's drivers, including the claimant have access to a company stamp as produced on the form.

Determination:

Having carefully considered all of the oral and written evidence, the Tribunal faced a clear conflict of evidence between the parties.

The Tribunal has greater difficulty believing the assertions of the claimant regarding his illness and how he notified the employer and how he processed his claim for benefits. These credibility issues make it impossible for the Tribunal to accept the claimant was not aware of his dismissal until September 2009.

In the view of the Tribunal the claim was not made within the six months provided by the Acts and we do not believe exceptional circumstances existed to allow us to extend the period. The claim under the Unfair Dismissals Acts, 1977 to 2007, fails for want of jurisdiction.

However, in accepting the claimant was dismissed on 5 January 2009 we also believe he is entitled to one week's gross pay (€561.00) in lieu of notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)