

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD528/2011
RP730/2011, MN569/2011

against

EMPLOYER

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr. P. Casey
Mr D. McEvoy

heard this claim at Cork on 24th November 2011 and 2nd April 2012

Representation:

Claimant : In person

Respondent : No representation listed

The secretariat of the Tribunal received the claimant's application under the Unfair Dismissals Acts, 1977 to 2007 on 16 February 2011. Among the details on his signed T1A was his date of termination of employment with the respondent. That was stated as 9 April 2010. Having considered that issue the Tribunal found it had no jurisdiction to hear his case under those Acts.

The determination of the Tribunal was as follows:

Claimant's Case

The claimant commenced employment by the respondent as a maintenance person in September 2000. In December 2008 he ceased work there up to the middle of January 2009 and received a P45. A similar situation occurred in December 2009 when again he was "dismissed" was given his P45 and returned to work in February 2010. In early April of the same year the same scenario happened as the claimant was told there was no more work. Between then and up to July his queries about resuming work did not elicit a positive reply. He went to Latvia for a week on 14 July 2010 and then returned to Ireland. The claimant maintained that he did not receive a

letter from the respondent dated 15 July 2010.

The claimant did not accept the news from the accountant that further work was available to him from the respondent when they met on 23 July. He then again travelled to his native country and returned again to Ireland some three months later. When he sought work again at the respondent he was told none was available. The claimant acknowledged that every time he had been laid off in the past he was taken back to work by the respondent.

Respondent's Case

The respondent's accountant told the Tribunal that the claimant was laid off on 9 April 2010. He was issued with a P45 for social welfare purposes. This witness was presented with a RP9 from the claimant on 9 July and then consulted one of the directors on that application. On 15 July that director wrote to the claimant advising him there was work available at the respondent's from 26 July lasting at least thirteen weeks. Three days prior to that the witness met the claimant who made it known to him that he was now seeking redundancy. The claimant added that he was soon returning to his own country and would not return for three months. The accountant told him in those circumstances he was not entitled to a redundancy payment. On 24 August 2010 this witness wrote to the claimant informing him that the respondent now considered him to have abandoned his employment. Between 23 July and that date several attempts were made to contact the claimant. Those attempts were not responded to. His position was then filled.

Determination

At best the claimant misunderstood and misread the work situation he faced from April 2010. This, however, is unlikely as the situation presented to him at that time was not fundamentally different than what he faced before on at least two occasions. The respondent while acting correctly in this case could have been more explicit and forthright in their communication with the claimant.

The respondent effectively gave counter notice to the claimant. The claimant in turn did not accept or maybe opted not to believe the offer of at least thirteen weeks further work. His position was replaced. The Tribunal cannot find that a redundancy situation existed in this case.

Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2007 falls.

Since there was no dismissal in this case it follows that the appeal under Minimum Notice and Terms of Employment Acts, 1973 to 2005 must fall.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)