

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

EMPLOYEE - *appellant*

CASE NO.
MN1421/2010

RP1996/2010

against

EMPLOYER - *respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney BL

Members: Mr T. Gill
Mr T. Brady

heard this appeal at Tullamore on 16th February 2012
and 1st May 2012

Representation:

Appellant(s) : Mr Henry O'Shea, SIPTU, Unity Hall, Church Street,
Tullamore, Co Offaly

Respondent(s) : Mr Shane Geraghty BL instructed by Byrne Carolan Cunningham, Solicitors,
Main St, Moate, Co. Westmeath

Preliminary Issue in relation to Redundancy Claim

The Tribunal makes the following findings regarding the claim under the Redundancy Payments Acts 1967 to 2007:

- (1) That the appellant clearly had the benefit of appropriate advice prior to instituting proceedings.
- (2) That clearly the appellant had identified by letter dated 20 May 2010 that the respondent was his employer.
- (3) That by letter dated 1 June 2010 from the respondent's legal representative, it was clear that all parties accepted that the respondent was the appropriate employer.

Despite this clear factual position the claim was lodged against a director of the respondent company personally rather than the company. A subsequent claim form was lodged on 20

December 2010 against the respondent company and a director of the company (Mr. B). At the first hearing of the case the appellant's trade union representative withdrew all claims against (Mr. B) personally. In these circumstances the claim against the respondent company is out of time.

Determination on Preliminary Issue

The Tribunal unanimously finds that no reasonable cause was shown by the appellant to permit the Tribunal to extend the time under section 24 of the Redundancy Payments Act 1967, as amended by section 12 of the Redundancy Payments Act 1971 on the ground put forward by the appellant's union representative of ignorance and/or mistake as to the correct employer. Therefore the Tribunal declines jurisdiction to hear the claim under the Redundancy Payments Acts 1967 to 2007.

Appellant's Case in relation to Minimum Notice claim

In respect of the claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 the appellant gave direct evidence that he worked for the respondent since June 2005. In August 2009 he was working on a football stadium project. At the time the respondent company was engaged as a sub-contractor by a company known as (RR) on the stadium. On 24 August 2009 he was told by (JB), for the respondent company that he had no more work for him. He was told that company (RR) was willing to offer him an interview for work. On 26 August 2009 he attended for interview with company (RR) and commenced working for that company on the following day.

He enjoyed better pay and conditions working for company (RR) than he had received with the respondent company. He accepted that (JB), for the respondent company had helped to arrange the interview with company (RR). He denied that (JB) told him that he had other work available for him and gave evidence that (JB) told him that he (the witness) could either go on the dole or go for an interview with company (RR).

Respondent's Case in relation to Minimum Notice claim

(JB) for the respondent company gave evidence that the appellant was employed as a roofer since June 2005. In 2009 the company was involved in a number of projects one of which was the aforementioned football stadium where the appellant was working. In August 2009 issues arose on that project between the respondent and the main contractor, (RR) concerning rates of pay and terms & conditions of employment. He accepted that he was not in a position to meet his obligations under the relevant Registered Employment Agreement and as a result the respondent discontinued its work on the stadium. He gave evidence that he gave a number of employees the option of remaining working for the respondent on other projects or seeking alternative work with the main contractor, (RR). (JB) told the Tribunal that he never told the appellant that he no longer had any work for him but accepted that the pay & conditions on offer from company (RR) were superior to what the respondent company could offer. If the appellant did not accept the offer of work from company (RR), he, (the witness) had work on other sites for him.

(DS) gave evidence that he worked for the respondent for a number of years. In August 2009 (JB) told him that company (RR) was in a position to offer him better conditions of employment. He was given the option of remaining in employment with the respondent or

going to work for company (RR). He chose to remain in employment with the respondent as it best suited his personal circumstances. He remained in employment with the respondent working on various sites in Dublin. He gave evidence that at no stage was he told that the respondent company no longer had work for him. Eventually he left employment with the respondent company voluntarily as he wanted to return to his native county in the west of Ireland.

Determination

The Tribunal unanimously makes a finding of fact that there was no dismissal and therefore the entitlement under the Minimum Notice and Terms of Employment Acts 1973 to 2005 does not arise. Accordingly the claim fails and is hereby dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

