

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE - **Claimant**

UD187/2011

MN185/2011
TE156/2011

against

EMPLOYER - **Respondent**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
TERMS OF EMPLOYMENT (INFORMATION) ACTS, 1994 AND 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C. Corcoran BL

Members: Mr A. O'Mara
Mr T. Brady

heard these claims at Dublin on 9 May
and 10 July 2012

Representation:

Claimant: Mr Krystian Boino, JC Hoban & Company, Solicitors, Suite
114, The Capel Building, Mary's Abbey, Dublin 7

Respondent: Mr Warren Parkes, Warren Parkes, Solicitors, Unit 1, The
Capel Building, Mary's Abbey, Dublin 7

The determination of the Tribunal was as follows:-

These matters came before the Tribunal in a situation where the claimant, in addition to the pursuit of a claim of unfair dismissal, was seeking to appeal a recommendation of a Rights Commissioner **R-096482-TE-10/MMG** under the Terms of Employment Information Acts.

Preliminary Issue

It was contended by the respondent that at the time the claimant's employment was terminated he did not possess the requisite twelve months service to enable him to bring a claim under the Unfair Dismissals Acts. It was further contended by the respondent that by the time the complaint under the Terms of Employment Information Acts was lodged with the Rights Commissioner Service more than six months had elapsed from the date of termination of the employment.

As its name implies the respondent provides personnel to its clients when the need arises at those clients. It was common case that the employment commenced on 2 December 2008 as a skip truck driver for a third party. In total the claimant worked for the respondent on 29 days. On 17 July 2009 the claimant was injured in the course of his work. His position was that this was the last occasion on which he worked for the respondent as he has not been fit for work since that time.

The respondent's position was that the claimant last worked for them on 6 August 2009 despite a P45 having issued showing a termination date of 2 July 2009 a day on which the respondent asserts the claimant was employed as a cleaner. Their position is further that the employment ended on 6 August 2009. The claimant's position was that this was the day when he was paid for the last three days he worked for the respondent on 15-17 July 2009.

The claimant continued to provide regular medical certificates to the respondent and on 18 January 2010 an employee relations administrator with the respondent provided the claimant with a letter, apparently for Social Welfare purposes, stating that the claimant "is employed with the respondent on a casual basis". Pursuant to a claim lodged with the Injuries Board (the board), on 4 August 2010 the board issued authorisation for the claimant to bring proceedings in respect of his claim against the respondent. On 9 August 2010, in a letter date stamped by An Post on 6 August 2010, the claimant received a P45 from the respondent.

In circumstances where there was no evidence of the employment relationship having been severed prior to the receipt of the P45 on 9 August 2010 the Tribunal was satisfied that 9 August 2010 was the date of termination. Accordingly, the claimant had the requisite service in order to pursue his claim under the Unfair Dismissals Acts. The claim under the Terms of Employment Information Acts was lodged with the Rights Commissioner Service on 24 August 2010, clearly within six months of the date of termination. Accordingly, the Tribunal found there was jurisdiction to hear the appeal under those Acts.

Determination

The Tribunal having found that the claimant was not dismissed until 9 August 2010 when he

received the P45 which purported to show a termination date of 2 July 2009, the respondent was not in a position to adduce any evidence of any procedure which had been applied to effect the termination of the employment. It is hard to escape the conclusion that the issuing of the P45 was somehow connected to the authorisation from the board which issued on 4 August 2010. It follows that the dismissal was unfair. The claimant has not been fit for work since the dismissal and the Tribunal deems an award of €977-00, being four weeks' pay, under the Unfair Dismissals Acts, 1977 to 2007 as being just and equitable in all the circumstances.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 is not sustainable, as the claimant was not fit to serve his notice.

The respondent being unable to show the Tribunal any documentary evidence that it complied with its obligations under the Terms of Employment (Information) Acts, 1994 and 2001 the Tribunal finds the complaint under these Acts well founded, upsetting the recommendation of the Rights Commissioner and awards €498-50 under those Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)