

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:	CASE NO.
EMPLOYEE – <i>Claimant 1</i>	UD1442/2010 MN1386/2010
EMPLOYEE – <i>Claimant 2</i>	UD1443/2010 MN1387/2010
EMPLOYEE – <i>Claimant 3</i>	UD1444/2010 MN1388/2010
EMPLOYEE – <i>Claimant 4</i>	UD1507/2010 MN1444/2010
Against	
EMPLOYER – <i>Respondent 1</i>	
EMPLOYER – <i>Respondent 2</i>	
EMPLOYER – <i>Respondent 3</i>	
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 P. Hurley
Members: Mr G. Andrews
Ms S. Kelly

heard this claim at Nenagh on 28th February 2012

Representation:

Claimant(s) : Mr Diarmuid Enright, UCATT, 56 Parnell Square West, Dublin 1

Respondent(s) : Employee of third named respondent in attendance

Preliminary Issue

The Tribunal were informed by BB on behalf of the third named respondent that the claimants were not employed by that company at any time. BB told the Tribunal that a joint venture company was established to construct the N7 Castletown to Nenagh bypass and sub-contracted the first named respondent to carry out this work. BB said that the Joint Venture Company was not named as a respondent in this case and when asked if he could agree to the company being added to the appeal he indicated he would have to take instruction from a director. The Tribunal gave him an opportunity to do this however he was unable to make contact with the relevant director.

Claimant 1

The claimant FS gave evidence of commencing employment in June 2007. In 2008 his pay cheque bounced on three occasions and he brought this to the attention of his employer. He also noticed that there was a shortfall in pay on a regular basis. He was told that when he moved from the Portlaoise site to the N7 site the arrears would be paid.

He went to the N7 site and was inducted by BSJV and each day took instruction from BSJV. He told the Tribunal that he was directly employed by the first named respondent. It came to his notice that his pension contributions were not being made by the employer as well as now being paid monthly when he should be paid weekly and further shortfalls in pay. A meeting was arranged with the union and he and five colleagues attended. DV a director of the first named respondent approached him in advance of the meeting with the union and indicated his dissatisfaction at union involvement in a threatening manner.

On the 10th March 2010 he informed the site foreman that he was attending a meeting during his lunch break. On returning from the meeting later that afternoon BO'C an employee of the first named respondent told him he was dismissed and he was asked to leave the site immediately and leave any equipment behind. He could not recall if BO'C told him why he was dismissed but based on comments the previous day from DV he knew it was as a result of meeting the union. The following day at an unofficial protest at the gate to the compound BO' C asked if he would return to work and he agreed to meet DV who said he was sacked and to get off the site.

With regard to a full and final settlement document handed in to the Tribunal FS stated he signed and accepted that amount as a settlement although the amount did not reflect the full amount owed in pay at that time. He reluctantly signed the settlement as he and others were told if one failed to sign the settlement nobody would get the money. He was anxious to ensure his former colleagues would not lose out by him not signing the document.

Claimant 2

DD claimant 2 gave evidence of commencing employment in January 2009. He told the Tribunal how he was owed arrears in pay which had been building up over a period of time and arranged to meet with a representative of his union. Before attending the meeting with the union

representative rumours were circulating that anyone who met with the union would be sacked. Following attending the meeting on the 10th March 2010 BO'C arrived at the site (structure 33) and told him he was sacked for meeting with the union. He was told to leave the site immediately. DD confirmed to the Tribunal that he only went to the union because he had not been receiving his full pay, was paid monthly instead of weekly and the shortfall was building each month.

Claimant 3

DQ claimant 3 gave evidence of commencing employment in January 2009. He told the Tribunal that he had an issue with his pay and was left short with each pay packet. His pay was always in arrears and for that reason met with the union official to get assistance. Having met with the union representative on the 10th March 2010 he was later approached by BO'C at structure 33 and told he was sacked and to leave the site immediately with no reason given for dismissal. He provided the Tribunal with payslips which indicated the first named respondent as his employer.

Claimant 4

PS claimant 4 gave evidence of commencing employment in April 2007. Following a shortfall in his pay over a period of time he went to meet with a union representative on the 10th March 2010 during his lunch break. On returning to work BO'C told him he was sacked and should leave immediately. Initially he understood he was being put on notice of dismissal but BO'C informed him it was effective immediately.

Third named Respondents Evidence

BB an employee and representative of the third named respondent told the Tribunal that a joint venture company who was not a named respondent in this case employed the first named respondent to supply a workforce to complete a project. He recalled on the day the claimants were dismissed he was meeting the union official at the time the call came through. Following that date the joint venture company paid the pension contributions for the employees and recouped the money from the first named respondent as permitted by the conditions of the contract between the joint venture company and the first named respondent.

BB denied that the joint venture company hired agency staff to replace the claimants two days following their dismissal. He confirmed to the Tribunal that there was one project manager on site who was an employee of the joint venture company. Other than the dispute and grievance mechanisms included in the Registered Employment Agreement he was not aware of any other mechanism.

Determination

The Tribunal has considered the evidence of the claimants and the respondent including the written evidence offered. Having considered in detail the evidence offered and the documents

submitted the Tribunal is of the view that arising from the complex relationships between the first, second and third named respondents and the claimants, the second named respondent was on the occasion of their dismissal the true employer of the claimants. The Tribunal finds that the claimants were unfairly dismissed and awards each of the claimants €37,700.00 under the Unfair Dismissals Acts, 1977 to 2007.

As no evidence was adduced in relation to the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 the Tribunal dismisses these claims.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)