

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE - **Claimant**

UD1054/2011
RP1409/2011
MN1167/2011
WT431/2011

against

EMPLOYER - **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr D. Morrison
Ms A. Moore

heard these claims at Sligo on 2 October 2012

Representation:

Claimant:

In person

Respondents:

In person

The determination of the Tribunal was as follows:

The fact of dismissal being in dispute between the parties it fell to the claimant to prove that issue

Determination:

The claimant and the respondent had worked together in enterprises involved in website development from around 2000. Over the years the respondent was the director of two companies, both of which employed the claimant at various times. For a time the claimant was a director of one of those companies. From January 2010 the claimant was an employee of the respondent. It was common case that the claimant's employment began in 2003.

While the respondent had a continuing level of dissatisfaction with the claimant's performance, on 25 June 2010 both parties signed a new contract of employment for the claimant. The issues between the parties related to the completion of work allocated to the claimant and the non-receipt of remuneration by the claimant.

The contract provided for payment of salary on the last Friday of the month. On 25 June 2010 the respondent gave the claimant three cheques, two of which were post-dated. When the claimant presented the third cheque, dated 9 August 2010, on 12 August 2010 it did not clear. The claimant's position was that this added to his already high levels of stress in the workplace. The claimant was on certified sick-leave from 24 August 2010.

On 31 August 2010 the claimant requested that the respondent declare his position redundant. The respondent refused this request, after consultation with his accountant, as there was work for the claimant to do. On 25 November 2010 the respondent issued the claimant with his P45 form.

The Tribunal is not satisfied that the respondent dismissed the claimant as contended by the claimant. Rather it prefers the evidence of the respondent that the claimant abandoned his employment. Accordingly, the claims under both the Unfair Dismissals Acts, 1977 to 2007 and the Redundancy Payments Acts, 1967 to 2007 must fail. It follows that a claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 does not arise.

The Tribunal awards €576-92, being the equivalent of five days' pay in respect of unpaid annual leave, under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)