

**EMPLOYMENT APPEALS TRIBUNAL**

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CLAIM(S) OF:

CASE NO.

EMPLOYEE

*claimant*

RP648/2011  
UD471/2011  
MN509/2011

Against  
EMPLOYER

*respondent*

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr R. Maguire, B.L.

Members: Mr W. Power  
Mr. S. O'Donnell

heard this claim at Dublin on 19th July 2012

Representation:  
\_\_\_\_\_

Claimant:

Respondent(s) :

The determination of the Tribunal was as follows:-

The claim under the Unfair Dismissals Acts, 1977 to 2007 was withdrawn prior to the hearing.

**Claimant's Case**

The claimant told the Tribunal that he was employed with the respondent for three and a half years. His employment ended on the 3rd September 2010. He worked on the construction of the M50. After the M50 was completed CB telephoned him on Monday and asked him if he was finished on the M50 and he told him he was. CB told him about some new job and the claimant was ill. CB told the claimant to keep his mobile telephone switched on. The claimant was offered a job at €10/€12 per hour. The claimant then went to see his representative. He forwarded letters to the respondent on the 13<sup>th</sup> September 2010, 15<sup>th</sup> September 2010 and 27<sup>th</sup> September 2010 and he received no response. He met JD and JD

told the claimant he could give him a job for €10.00 per hour. He did not meet JD after this.

In cross examination he stated that at the meeting with JD he did not tell him that he was recording the meeting. He secretly recorded the meeting. He agreed that his place of work was at various sites in Dublin. He did not accept the offer of €12 per hour as it was not enough to support his family.

### **Respondent's Case**

GD told the Tribunal that the claimant undertook work on the M50. When the claimant and his colleagues finished on this project the foreman spoke to the employees directly. The client informed the respondent who is an employment agency that the claimant was finished. CB from the respondent contacted the claimant and the claimant told CB that he was ill. CB told the claimant to contact him when he was fit for work. The claimant did not want to work at a reduced rate of pay. Building contractors contacted the respondent when they were seeking carpenters, and labourers. Assignments could be of a day's/week duration.

If a client had issues with employees the respondent dealt with them. When the assignment terminated the client contacted the respondent and spoke to the employee. Depending on location employees commenced work on another site. A number of contractors used agencies as a stop gap and it was very transient. Certain contractors would always have work for the respondent.

If the claimant was let go he would be entitled to two weeks' notice. The claimant contacted the respondent on Friday and he was not available. He was not made redundant.

In cross examination GD agreed that the claimant was working on the same job for three and a half years. He was told one day the job was finished and he was aware it was coming to an end. CB asked the claimant if he was available for work on Monday. The claimant told CB that he was ill. CB told the claimant to contact him whenever he was well. He received a number of letters from the claimant in September 2010 and he had a number of interactions with him after this. In the letters the claimant wished to know when he could return to work and he requested a letter for Social Welfare in the interim to allow him claim benefit. This set off alarm bells.

If the claimant was not working he did not get paid. He telephoned the claimant on at least two occasions. The respondent had work for the claimant. The claimant was four weeks without work. At a meeting the claimant was offered labouring work at a reduced rate of pay.

The claimant was offered work as a labourer or driving a machine. This was not covered by the Registered Employment Agreement. On the M50 project the respondent had to pay REA rates as government jobs had to pay this rate. The respondent was not obliged to pay REA rates. The claimant was offered a job in a hospital and this could have continued for six months. The claimant did not want to work for the respondent. He met the claimant on the 29th September 2010 and offered him alternative work at a reduced rate of pay. The claimant was not made redundant but rather he resigned.

The client makes the call and the respondent did not get notice. He met the claimant on the 29<sup>th</sup> September, he had telephoned him on a couple of occasions to establish what he planned on doing.

## Determination

Both parties agreed that job that the claimant had on the M50 ceased and the only work that the claimant was offered was at €12.00 per hour as opposed to €16.37 per hour which he had been earning for the duration of his employment. The claimant refused to accept employment at this rate of pay and subsequently claimed redundancy which the employer contested. The determination of the Tribunal is that a redundancy situation arose and that it was not unreasonable for the claimant to refuse alternative work offered to him. The Tribunal find that he is entitled to a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following:-

Date of birth:	6 <sup>th</sup> October 1971
Date employment began	29 <sup>th</sup> March 2007
Date employment ended	3 <sup>rd</sup> September 2010
Gross weekly pay	€1,200.00

It is the evidence of the claimant that his earnings were €1,200.00 per week. The respondent contested this but provided no evidence to the contrary. The Tribunal therefore finds that the claimant was earning €1,200.00 per week.

The claimant gave evidence that he could not work for €12 per hour because of his financial commitments. The Tribunal accepts that this refusal of alternative work on the basis of economic circumstances was a reasonable refusal within the meaning of the Redundancy Payments Acts 1967 to 2007.

The claimant is entitled to two weeks gross pay in lieu of notice in the amount of €2,400.00 (€1,200.00 per week) under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

As the claim under the Unfair Dismissals Acts 1977 to 2007 was withdrawn at the outset of the hearing no award is being made under this Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

