

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE
–Claimant

UD892/2011
RP1242/2011
MN1031/2011

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms C. Egan BL

Members: Mr B. O’Carroll
Ms H. Henry

heard these claims at Roscommon on 13 November 2012

Representation:

Claimant:

In person

Respondent:

directors of the respondent

The determination of the Tribunal was as follows:

At the outset the claim under the Unfair Dismissals Acts, 1977 to 2007 was withdrawn. The claimant worked as a roofer from 11 June 2007. The employment was uneventful until 4 April 2010 when the claimant, who was regarded as highly competent at his work, sustained a knee injury whilst playing sport. This injury resulted in the claimant being unfit for work until 24 October 2010.

On or around 7 October 2010 the claimant spoke to one of the directors of the respondent (DR) in order to inform the respondent of his return to work date. The claimant’s position was that during this conversation DR informed the claimant that all was well for him to return to work. The respondent’s position was that at this time their temporary workers had been let go and around ten permanent workers were either on a three-day week or on temporary lay-off.

The claimant tried, without success, to speak to either DR or the other director (OD) before 23

October 2010. On 5 November 2010 the claimant spoke to OD who told the claimant that there was no work available on PVC roofing (the claimant's specialisation) at that time. DR told the claimant there was no work for him on 10 November 2010 and during this conversation the claimant's position was that he canvassed the question of his position being made redundant.

The claimant obtained alternative work from 15 November 2010 and the respondent's position was that from that point the claimant was no longer available to work for it even though work became available in December 2010. A P45 issued to the claimant, following his request for same, in December 2010 showing an employment ceased date of 9 April 2010

Determination:

This case was characterised by an almost total lack of written correspondence between the parties. The Tribunal is satisfied that from on or around 7 October 2010 the respondent was on notice that the claimant would be fit to resume work on 23 October 2010. Accordingly, from 23 October 2010 the claimant was laid off by the respondent. Whilst on lay-off the claimant was entitled to seek alternative work and still remain an employee of the respondent. This the claimant did from 15 November 2010. The Tribunal is satisfied that the claimant requested his P45 in order to regularise his tax affairs whilst undertaking the temporary employment. The Tribunal accepts that the claimant canvassed the issue of redundancy with DR on 10 November 2010. If the respondent felt that the claimant had resigned by dint of taking up alternative work it was open to them to write to him in those terms either at the start of that temporary employment or in December when the P45 was requested. The respondent did not do that. The Tribunal is satisfied that the claimant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007, by reason of having been laid off for in excess of four consecutive weeks, in accordance with the following criteria.

Date of Birth	20 June 1978
Employment commenced	11 June 2007
Employment ended	6 December 2010
Gross weekly pay	€713-31

There were two periods of non-reckonable service, the first, by reason of illness in excess of 26 consecutive weeks, from 4 October 2010 until 22 October 2010, the second, by reason of lay-off, from 23 October 2010 until 6 December 2010.

It should be noted that payments from the social insurance fund are limited to a maximum of €600-00 per week. This award is made subject to the appellant having been in insurable employment under the Social Welfare Consolidation Act, 2005 during the relevant period.

The claimant having sought a lump sum payment by reason of lay-off a claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 does not arise.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)