

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE – *claimant*

UD1892/2011

RP2468/2011

MN1950/2011

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 M. Levey

Members: Mr M. Noone
Mr Al Butler

heard this appeal at Dublin on 21th February 2013.

Representation:

Claimant: Mr Paul Henry of SIPTU, Liberty Hall, Dublin 1

Respondent: In person

The determination of the Tribunal was as follows:-

The claims under the Unfair Dismissals Acts 1977 to 2007 and under the Minimum Notice and Terms of Employment Acts 1973 to 2005 were withdrawn.

Claimant's Case

The claimant gave evidence. He had worked for the respondent for 4 years as a labourer and tele-porter driver. On the last site where he worked, he had agreed a rate of €13.50 per hour with the recruitment consultant. However he was paid this rate for one day only. The following week his rate of pay was reduced to €11 per hour without any consultation. When he spoke to the recruitment consultant the claimant was informed that the rate would come back up to the agreed rate. The claimant phoned the recruitment consultant on receipt of his third pay slip, he

was still on the reduced rate. The recruitment consultant told the claimant that it was a very tight site he was working on but his rate of pay would increase when he moved to another site.

There was no mention of a termination of his employment. The claimant was very shocked to receive his p.45. The claimant had refused to work for €11 per hour. He had agreed a rate of €13.50 with the respondent and he was willing to work for that. The claimant had not wanted to lose his job.

Respondent's Case

The recruitment consultant gave evidence. He recalled his phone conversation with the claimant. The claimant was exasperated at his rate of pay. He asked for more than €11 per hour. The requested a higher rate. The recruitment consultant told him that if they could afford it they would pay him more. When he put the receiver down the recruitment consultant felt that they were losing a good man.

The recruitment consultant informed the operations manager that the claimant could no longer work and his p.45 was issued. It did not occur to the recruitment consultant to ask the claimant to put his resignation in writing.

The recruitment consultant would have agreed a rate with the claimant before he started work on the site. He could not recall what the rate was for that particular site for the claimant.

The operations manager gave evidence. The contractor on the site where the claimant worked pays one of the lowest rates in the industry. The operations manager decides rates of pay on a week to week basis when he is notified what the clients are prepared to pay.

The operations manager met with the claimant and offered him work. The claimant was not prepared to work for the rate of pay available and the operations manager regarded this as a termination of employment. The operations manager accepted that the claimant's contract did not oblige him to accept any particular assignment. The claimant did not accept the work offered to him and at that time therefore he was issued with a p.45.

The operations manager did write to the claimant asking him to make contact if he changed his mind. The claimant did not respond.

Determination

The Tribunal carefully considered the evidence adduced. The Tribunal accepts that the claimant was annoyed by the reduction in his rate of pay, especially when this happened without prior notice or consultation with him.

However the operations manager was clear that there was work available for the claimant and this was communicated clearly to the claimant. There was work available for the claimant and

as a result the Tribunal finds that a redundancy situation did not exist at the time when the claimant's employment ceased. The claim under the Redundancy Payments Acts 1967 to 2007 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)