

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1019/2011, RP1378/2011
MN1143/2011, WT420/2011

against

EMPLOYER
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: Ms V. Gates

Members: Mr E. Handley
Mr G. Whyte

heard this claim at Dublin on 18th October 2012 and 12th February 2013

Representation:

Claimant :

Respondent :

The appeals under the Redundancy Payments Acts, 1967 to 2007 and the Organisation of Working Time Act, 1997 were withdrawn during the initial hearing.

The determination of the Tribunal is as follows:

Preliminary Issue

A T1-A form was submitted on behalf of the claimant to the secretariat of the Employment Appeals Tribunal on 5th May, 2011. The claimant had signed the T1-A form on 4th April, 2011 and sought relief under four headings and objected to a Rights' Commissioner hearing his claim under the Unfair Dismissals Acts.

At the hearing on 18th October, 2012, it transpired that the claimant had, on 31st March, 2011 made an application to a Rights' Commissioner under the Unfair Dismissal Acts and that a hearing had taken place on 5th August, 2011 and a recommendation issued on 28th

September, 2011. Neither the claimant nor a representative on his behalf appeared before the Rights' Commissioner and the Rights' Commissioner, having heard the uncontested evidence of the respondent, recommended that the claimant's case should fail. The Rights' Commissioner

signed the recommendation which then issued to both parties. No appeal was lodged by the claimant against said recommendation.

It was submitted on behalf of the claimant that, as he had changed address, he did not receive the Rights' Commissioner recommendation. It was further submitted that as the claimant was a foreign national, he did not fully understand the process of application. It was confirmed that the claimant attended with his solicitor on 11th April 2011 being the date on which the first T1A form submitted by the claimant to the Tribunal was signed. A subsequent T1A form was signed and submitted to the Tribunal on 19th June, 2011.

On behalf of the respondent, it was submitted that no appeal from the Rights' Commissioner recommendation had been lodged by the claimant and that the claimant had failed to attend at the Rights' Commissioner hearing.

Having considered the submissions of each party in relation to whether or not the claimant was entitled to pursue a claim under the Unfair Dismissals Acts, the Tribunal was of the view that there was an onus on the claimant to make appropriate arrangements to notify the rights' commissioner of any change in address and to inform his legal advisors that he had already completed an application in respect of his claims. The Tribunal found it had no jurisdiction to hear the claim under the Unfair Dismissals Acts, 1977 to 2007 as it is bound by the provision of section 8 (5) (a) of the 1977 Act, that is,

The Tribunal shall not hear a claim for redress under this Act (except by way of appeal from a recommendation of a rights Commissioner)-

(a) If a Rights commissioner has made a recommendation in relation to the claim.

Having informed the parties of the Tribunal's determination in relation to the Unfair Dismissals claim, the matter was adjourned to 12th February, 2013 for a hearing of the appeal under the Minimum Notice & Terms of Employment Acts, 1973 to 2005. By letter dated 7th January, 2013, confirmation was sent to both parties that on the adjourned date, the only matter before the Tribunal related to such a claim.

At the hearing on 12th February, 2013, the claimant's representative sought to re-open the issue under the Unfair Dismissals Acts, 1977 to 2007 on the grounds that the Rights' Commissioner recommendation contained a mis-description of the Respondent in its title. Following consideration of the argument, the Tribunal declined to alter its determination in relation to lack of jurisdiction by virtue of section 8 (5) (a) of the Unfair Dismissals Act, 1977.

Having heard evidence from the operations' manager at the depot where the appellant was employed and the evidence of the appellant himself, the Tribunal is not satisfied that the respondent terminated the employment of the appellant on such grounds that deprived him of receiving notice of that termination nor payment in lieu of it.

Accordingly, the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 is allowed and the appellant is awarded the sum of €832.40 as compensation, being the equivalent of two weeks' notice pay.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

