

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

EMPLOYEE - *claimant*

CASE NO.

UD361/2011

RP428/2011

WT114/2011

MN355/201

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. T. Ryan

Members: Mr M. Murphy
Mr O. Nulty

heard this claim at Mullingar on 4th July 2012
and 18th December 2012

Representation:

Claimant: Ms Annette Carpenter, SIPTU, Menlough, Ballinasloe, Co Galway

Respondent: Ms. Noeleen Geraghty, Mark Cooney & Co., Solicitors, 5 Garden Vale,
Athlone, Co Westmeath

Claimant's Case

The claim under the Organisation of Working Time Act 1997 was withdrawn by the claimant's representative during the course of the hearing.

The claimant gave direct evidence that he commenced working for the respondent company as an engineer in February 2008. He was provided with a contract of employment but only received payslips if he requested them. He was initially employed on a full-time basis but due to a downturn in business was put on a 3 day week from September 2009. He remained working on a 3 day week basis until 1 September 2010 when (PC) for the respondent company told him that there was no more work coming in and he was being made redundant. He accepted the fact

that he was being made redundant, finished his work and took the train home.

He gave evidence that he was subsequently contacted by (PC) on 3 September 2010 and asked if he would be interested in working for a day here or there for cash. He understood this offer to be cash under the table and was told by (PC) that he would still be paid his redundancy. He accepted the offer and did 3 days' work for cash on 8, 10 and 13 September 2010. He was paid €200 cash for this work. The claimant gave further evidence that on 13 September 2010 he had a heated conversation with JK, a customer's father, concerning work that he had carried out on behalf of the respondent company for JK's son. He told the Tribunal that this work had not been carried out in the correct manner and he had pointed this out to (JK's) son. He gave evidence that (JK) was very stressed about the matter and threatened to bring him to court. He (the witness) had a subsequent conversation with (BI), a solicitor who worked in an adjoining premises and (BI) told him "never mind that lad, he will calm down". He also told (BI) that he felt uncomfortable working for cash and felt that he was being used. He told (BI) that the business was closing and that he was being made redundant. He also told him that he was not going to work for cash anymore.

The claimant gave further evidence that (JK) subsequently offered him an apology but he did not accept the apology. After the termination of his employment he contacted 20/25 clients of the respondent company and gave them the "heads up" on the situation. He told them that the business was about to close down and felt it appropriate that the clients should know that. He received his P45 following his dismissal and subsequently received a supplementary P45 which included the €200 cash payment. He was unemployed for 5 months after his dismissal.

Respondent's Case

The owner of the respondent company (PC) gave evidence. He had no real issues with the claimant's work and had not issued him with any disciplinary sanctions in connection with his work. Due to the downturn in business the claimant was put on a 3-day week from 21 September 2009; he was given two weeks' notice of this change. The claimant had enquired with Social Welfare what his entitlements while on short-time would be, so chose a 3-day week in order to claim Social Welfare for the remaining two days. The claimant worked for his brother who was a plasterer on the days he was not working for the respondent.

In January 2010 the respondent was forced to sell the company van which the claimant used so he started paying for his train fares instead. By 01 September the business decreased to the extent that the claimant was put on temporary lay-off. The claimant left his keys and phone that day as he was going on temporary lay-off. The respondent gave the claimant 2 options:

1. To take on the remaining existing engineering works and take them on himself
2. Work 1-2 days per week until the existing engineering work is complete which would take approximately 6 months.

PC did ring the claimant asking him if wanted to take either of the options; he did not so the respondent had to hire someone to replace the claimant.

The claimant was on a site visit on 10 September and was due back in the office on 13 September. PC rang the claimant who answered sounding very distressed. PC returned to the office and discovered the claimant very agitated as he had had a 'run-in' with the father of a client. There was an issue with the specifications of a job which caused the argument

between the claimant and the client. PC organised a meeting to sort the issue out. The client's father apologised and attempted to shake the claimant's hand but the claimant refused. The claimant left and when PC went back up to the office the claimant was leaving and said, *'I don't need this, my wife and child are the most important'* he then said he was *'quitting.'* When PC asked him about his remaining work again the claimant said, *'I don't need this.'*

On 16 or 17 of September the claimant returned and finished a report; he was paid in cash but this payment was fully put through the accounts system. PC did not contact the claimant and ask him to work for 'cash' as another specified engineer wasn't available to do it. The claimant then contacted PC requesting his P45 and his redundancy payment. The claimant then contacted PC stating the termination date was wrong on his P45 and requested his redundancy, notice and outstanding holiday pay. The respondent replied by letter of 21 September 2010 informing the claimant that the termination date was correct and that a supplementary P45 would issue to reflect the days he worked to finish his remaining work. The letter also states,

'In relation to your enquiry regarding Redundancy, I don't see how this arises given that you notified me on the 13th of September 2010 that you were ceasing employment with (the respondent) effective immediately.'

PC was surprised at the request for redundancy as the claimant had resigned and it had never been mentioned before. PC did not make the claimant redundant on the 1st of September. PC informed the claimant that he would speak to his accountant about the relevant documentation for putting someone on lay-off.

The respondent then received a number of calls (15+) from his clients asking whether he was still trading or if 'he'd gone bust' and querying whether he had the Professional Indemnity Insurance required to complete any outstanding work.

The Solicitor (BI) that spoke to the claimant on the 13th of September after the disagreement with the client gave evidence. The claimant told BI that, *'I've had enough I'm going'*. BI then suggested that he speak to PC and try to sort things out; the claimant responded that his mind was made up and he would be effectively looking for work. The claimant never mentioned receiving 'cash under the table' or redundancy to BI or any other difficulty with the respondent.

Determination

The Tribunal accepts the evidence of BI, that the claimant called into his office on the 13th of September 2010 and advised BI that he had received a 'bollicking' from a client and that he was leaving his employment, using the following words, *'I've had enough...I'm going...I can't take any more of it.'* The Tribunal also accepts there was no discussion at this meeting about being paid 'cash' for future work nor was there any discussion about redundancy.

Furthermore the Tribunal notes that BI wrote to the claimant on the 1st of October 2010 and confirmed, among other matters, the conversation of the 13th of September with BI writing, *'I am aware you are no longer working with (the respondent) because you informed me on the afternoon of the 13th of September 2010 that you were leaving your employment.'* This version of what was said at the meeting was not subsequently challenged by the claimant.

Having carefully considered all of the evidence the Tribunal unanimously determines that the claimant resigned his position on the 13th of September 2010 following a disagreement with a client about a particular job. This verbal altercation caused considerable stress to the claimant leading him to take the action he did. The Tribunal does not accept that the claimant was dismissed by reason of redundancy or otherwise. This is not to say the claimant did not have real fears about his position being made redundant, which fears would be entirely understandable given the fact that he was on a 3-day week, and taking into consideration the precarious economic situation prevailing in the country with the construction industry being particularly badly affected.

The Tribunal find that the claims under the Unfair Dismissals Acts, 1977 to 2007, the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 To 2005 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)