

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE – *claimant*

UD1351/2011

RP1795/2011

MN1448/2011

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 K. T. O'Mahony BL

Members: Mr D. Hegarty  
Ms J. Flavin

heard this claim at Cork on 5<sup>th</sup> February 2013

Representation:

Claimant:

Respondent: In person

The determination of the Tribunal was as follows:

The claim under the Redundancy Payments Acts 1967 to 2007 was withdrawn.

**Claimant's Case**

The claimant worked as an electrician with the respondent, an electrical contractor, from August 2003 until his employment was terminated on 21 March 2011. On 18 March while working on a house in Co. Waterford, the respondent asked the claimant if he knew of any other job in the area and suggested that he look for work during the weekend. On the following Monday the respondent asked the claimant to work until 8.00pm to complete a job; a generator powered the lighting in the house. However, at around 4.30pm that afternoon the respondent again asked the claimant if he knew if any other work was available and when the claimant replied that he did not, the respondent told him that he could not use him any further.

In reply to a question from the claimant the respondent told him he was not being made redundant. The respondent would not give him any reason for letting him go. The respondent asked the claimant to meet him in a hotel car park on Friday afternoon, 25 March where he would pay him any monies owing to him. The respondent also said that anything between them was private and should stay that way.

They met as arranged on Friday and the respondent paid him his wages by cheque but would only give him his P45 when he signed a letter, presented to him by the respondent, stating that he had received all monies owing to him. The respondent told him that unless he signed the letter he would not get a reference and he would ensure that he would not get work in Cork. The claimant signed the letter under duress. He felt stressed. He had enjoyed a good relationship with the respondent up until this time. The foreman never had a problem with his work and he did not have a disciplinary record. He did not know why he was let go. In cross-examination the claimant rejected the respondent's assertion that he resigned or voluntarily left his employment. He found other employment in October 2012.

The claimant's wife confirmed that the claimant was shocked and distressed at the ending of his employment, particularly as it came out of the blue. She advised him to consult a solicitor.

### **Respondent's Case**

On 11 March 2011 the claimant told him that he was spending too much time away from home and was thinking of setting up his own business in alarms. The respondent advised the claimant against it but the claimant had his mind made up and gave his notice. The respondent would not accept a week's notice.

The respondent did not ask the claimant to work late the following week. No work could be done after it became dark. At about 6.30pm on 21 March the claimant said he would go home and would return on Wednesday, if he was required. The respondent told him not to bother coming back and arranged to meet him on Friday, 25 March 2011.

On Friday he paid the claimant all the monies owing to him and asked him to sign an exit letter. He did not advise the claimant to get advice about the letter as he was an adult and should have known what to do. The claimant wanted a redundancy payment but was not entitled to it because he was setting up his own business. The respondent was adamant that he did not make the claimant redundant. He paid the claimant up to 25 March.

### **Determination**

The letter signed by both the claimant and respondent on 25 March 2011 does not amount to a settlement of any claims arising from the termination of the claimant's employment; the necessary conditions for a settlement to exist were not met.

Dismissal was in dispute in this case. There was a serious conflict of evidence between the parties as to how the claimant's employment terminated. Having considered the evidence, the Tribunal, in unanimously accepting, on the balance of probability, the claimant's version of the termination of his employment, finds that he was dismissed. The Tribunal believes it unlikely that the claimant would walk away from a job after more than 7 years satisfactory service at a time when the construction industry was experiencing widespread and

considerable difficulties. The dismissal was effective from 25 March 2011 in that the claimant was paid up to that date. The respondent confirmed that a redundancy situation did not exist. As there were no substantial grounds to justify the dismissal and a lack of fair or any procedures leading to the dismissal the Tribunal finds that the dismissal was unfair.

Accordingly, the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and the claimant is awarded the sum of €35,000.00 under the Acts.

The claim under the Minimum Notice and Terms of Employment also succeeds and the claimant is awarded the sum of €2,558.40 being the equivalent 16 days' pay @ €159.90 per day, [€799.50 per week].

As a redundancy situation did not exist at the relevant time the claim under the Redundancy Payments Acts, 1967 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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