

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

- claimant

UD1905/11

RP2487/11

Against

EMPLOYER

- respondent

Under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr N. Russell

Members: Mr J. Browne
Ms. P. Doyle

heard this claim at Waterford on 23rd May 2013.

Representation:

Claimant: In person

Respondent: In person

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant commenced employment on 8th August 1999 and worked as a security officer. He worked shifts. He worked in Dungarvan for over ten years and then did some static security work in Clonmel.

On 26 June 2011 his employer informed him that he had no work available for him. He did not work for the following eight weeks but kept in touch with the respondent on a regular basis during this time enquiring about work. He could not sign on the dole as his employer would not furnish him with his P45. He pressed the respondent for his redundancy entitlement but no offer was forthcoming. He felt he no longer had a job in the company during this time.

The claimant was offered mobile patrol security work in Clonmel on 22nd August 2011. He worked for approximately three evenings but he found the work difficult and his duties were different to those he had previously carried out. He informed the respondent that he no longer

wished to continue working in Clonmel. No alternative work was offered to him and he requested his P45. He signed a document that accompanied his P45 but never read it at the time.

Following the termination of his employment the claimant commenced a FAS Scheme on 28 August 2012 and is in receipt of €194.00 per week.

Respondent's Case:

The respondent employed the claimant in August 1999. The claimant was trustworthy, reliable and an excellent employee during his tenure. Initially the claimant worked as a mobile patrol driver. His role entailed calling to various locations. He moved on to static security work and worked two to three shifts in Ardfinnan from October 2009 to 29th March 2011. Subsequently, a large country house was being renovated in Clonmel and the claimant was offered and worked two to three shifts on this site. Following the completion of the renovation work on 26th June 2011 the respondent had no work available for the claimant. The respondent's business declined at this time.

The claimant enquired about redundancy. The respondent spoke to his Accountant who advised him that LIFO should apply in the company. The claimant was the longest serving employee and he could not make him redundant. The claimant became very annoyed and agitated.

In or around 22nd August 2011 the respondent had mobile patrol work available in Clonmel and he offered this work to the claimant. It was similar to work he had previously carried out. Four nights training was offered to the claimant. The claimant worked for two to three nights and he then rang the respondent. He told the respondent that he was going to finish up and that the alternative role offered to him was not suitable. He requested his P45 and wages owing to him. The respondent had prepared a letter in advance for the claimant and asked that he read it without any pressure being placed on him. The claimant read the letter and signed it. The letter was dated 25th August 2011 and stated that the claimant had declined the offer to continue working for the company.

Determination:

The Tribunal is satisfied that the role fulfilled by the claimant was made redundant. Evidence was given to the Tribunal that an alternative appointment as a mobile security operative handling some guard dogs was offered to the claimant. Evidence was given by the witness for the respondent company that the claimant would have been required to undergo four nights training and possibly a fifth night if needed.

The claimant reluctantly undertook the new role for a few nights, after no other work was offered for 6 to 8 weeks, but found that he could not cope with it.

The Tribunal is satisfied that the alternative work offered to the claimant was materially different from his redundant role and that it was reasonable for him not to take on that position.

The Tribunal is also satisfied that the claimant is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria:

Date of Birth: 01 September 1950
Date of Commencement: 08 August 1999
Date of Termination: 25 August 2011
Gross Weekly Wage: €348.00

This award is subject to the claimant fulfilling current social welfare requirements in relation to PRSI contributions.

As remedies under the Redundancy Payments Acts, 1967 to 2007 and the Unfair Dismissals Acts 1977 to 2007 are mutually exclusive, the unfair dismissal claim fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)