

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

-claimant

CASE NO.
UD1858/2011
RP2416/2011
MN1911/2011
WT750/2011

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
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. Clancy

Members: Mr. W. O'Carroll
Ms H. Henry

heard this claim at Ennis on 24th May 2013

Representation:

Claimant:

Respondent:
Respondent's Case

The respondent did not provide any evidence to the Tribunal.

Claimant's Case

The respondent is a retirement village and retirement home. The claimant worked for the respondent from April 2001. The claimant was initially involved in the building of the respondent premises and on its completion was offered the maintenance position in the retirement home.

In September 2009 the claimant was asked to a meeting by the respondent manager and asked whether he had considered retiring as he was 67. The claimant was not in possession of a Contract of Employment. The claimant did not want to retire and asked if there was a problem with his work. The respondent informed him that they were satisfied with his performance. The

claimant did not agree to retire. The respondent owner then phoned the claimant and offered him an alternative position as the maintenance person for the retirement village which was in the same complex as the retirement home. The claimant was informed there would be a reduction in his wages for the new position. He accepted the new position and commenced employment in the retirement village on the 1st of January 2010. He was replaced by two people in the retirement home.

At all times the claimant was paid by the respondent company. His manager did not change. He did not receive a P45 in December 2009. The claimant was given a new contract in March 2010; this was the first policy documents he ever received from the respondent. The claimant did not retire in December 2009. He never received a company pension.

In April 2011 the claimant was called to a meeting and informed by a manager that 'your employment is over; the company want a live in couple to take over.' He was given two weeks' notice. The claimant was informed that he was not entitled to redundancy as he did not have the required 2 years' service. The claimant did not receive a dismissal letter.

The claimant gave evidence of Loss.

The claimant did receive the letter confirming his retirement from the respondent in December 2009 and did accept and use the retirement gift.

Determination

The Tribunal are satisfied that the claimant had continuity of service with the respondent up to his dismissal in April 2011. The Tribunal find that the claimant was unfairly dismissed by the respondent and award him €12,000.00 in compensation under the Unfair Dismissals Acts, 1977 to 2007. Consequently the claim under the Redundancy Payments Acts, 1967 to 2007 is dismissed.

The claimant received two weeks' notice of his dismissal. The Tribunal now award him €840.00 being the equivalent to the balance of four weeks' notice as entitled under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

The Tribunal award the claimant his holiday entitlements for 2011 calculated as €204.00 under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)