

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE – **Claimant**

UD1345/2011
RP1785/2011
MN1441/2011

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: Mr P. Hurley

Members: Mr G. Andrews
Ms H. Henry

heard these claims at Castleconnell on 20 June 2013

Representation:

Claimant:

Respondent:

The determination of the Tribunal was as follows:

At the outset the claim under the Unfair Dismissals Acts, 1977 to 2007 was withdrawn.

The claimant was employed in the respondent's off licence business from February 2000. The employment was uneventful, with the claimant being employed as a manager from 2001, until being placed on a three-day week, along with other staff, in 2010 due to a downturn in business. The off licence closed down on 20 January 2011. It is common case that this close down was to enable the respondent to effect a remodelling of the premises and an amendment to the licencing arrangements.

On 21 January 2011 the claimant received a letter from the managing director (MD) of the respondent, dated 31 January 2011, in the following terms:-

“Dear Claimant,

This letter is to notify you of termination of your employment. This is due to the closure of the premises of the respondent from 20 January 2011. Your termination is not a reflection of your job performance. This decision is based solely on the economic climate.

If you have any queries or questions then feel free to contact me on phone no. xxxx.”

The respondent’s position was that this letter was prepared by the claimant for the purposes of his dealings with the Department of Social Protection and that as MD trusted the claimant he signed the letter without reading it.

It was common case that it was expected that the business would remain closed for some four or five months. In the event the business partially re-opened in November 2011 with it opening fully in late January 2012.

On 10 May 2011 the claimant’s solicitor wrote to MD requesting payments under, inter alia, both the Minimum Notice and Redundancy Pay Acts. MD’s solicitor replied on 19 May 2011 advising that the claimant would be reinstated when the business reopened after the delayed refurbishment. On 16 June 2011 the respondent’s solicitor wrote to the claimant’s solicitor to state that the claimant would be reinstated on the minimum wage on a three-day week and that the issuing of form T1A would precipitate the issuing of form RP9 issuing counter notice. On 23 June 2011 the claimant’s form T1A was submitted to the Tribunal.

The respondent issued form RP9 on 7 September 2011 giving notice of lay-off from 21 January 2011, Parts B & C concerning an employee’s claim for a lump sum payment and the employer’s giving of counter notice were blank.

Determination:

It is inescapable that on 21 January 2011 the respondent issued the claimant with a letter notifying him of the termination of his employment. MD accepts having signed this letter and, accordingly, must be held accountable for its content. The letter speaks for itself and the Tribunal is satisfied that the dismissal was by reason of redundancy. The claimant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria:-

Date of Birth	13 November 1971
Employment commenced	9 February 2000
Employment ended	21 January 2011
Gross weekly pay	€470-00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Consolidation Act, 2005 during the relevant period.

Loss having been established, the Tribunal awards €2820-00, being six weeks' pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)