

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE – claimant

RP328/2009

CASE NO.
UD325/2009

MN327/2009

against

EMPLOYER

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 J Flanagan BL

Members: Mr M Murphy
Ms M Finnerty

heard this claim at Navan on 17th February 2010

Representation:

Claimant(s): Mr John Regan
Branch Organiser SIPTU
Dan Shaw Centre, Commons Road, Navan, Co Meath

Respondent(s): Ms Caoimhe Scollard
IBEC
Confederation House
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

Preliminary Matter

Both parties were represented at this hearing but neither the claimant nor the respondent was present in person. The claimant's representative explained that the claims had come before the Tribunal at a previous hearing and had been fully resolved by way of a settlement. The term of the settlement had been reduced to writing. The case had then been postponed for a period in order to facilitate the implementation of the settlement. The settlement had not been fully implemented within the period of time originally been granted and so the representative of the claimant was seeking a postponement for a further period of time to allow completion of the settlement. The settlement had involved the payment of a sum of money. Both parties were in agreement that the

respondent had incorrectly withheld tax from that sum and only the balance after the deduction of taxation had been paid over to date. The respondent had given a cheque to the claimant the day before this hearing in payment of the outstanding balance but this cheque had not yet cleared.

Determination

The Tribunal considered it inappropriate to enquire into the detail of the settlement so as to respect the confidentiality of the agreement between the parties. However the Tribunal did inquire as to whether the settlement was of a type that was enforceable in the courts (often referred to as an “unconditional settlement”) and not one which would require a full hearing before the Tribunal should its terms not be fulfilled as agreed (often referred to as a “conditional settlement”).

The Tribunal refused the application for a postponement. The Tribunal is conscious of the need to husband its resources and therefore was not willing to risk this matter taking another half day of hearing time should a further difficulty arise in relation to the implementation of the settlement in circumstances where it was unnecessary supervise the settlement. This division considers it inappropriate to grant a postponement for the supervision of a settlement where the matter is subject to an unconditional settlement as the claims have been resolved and there is no longer any justiciable dispute before the Tribunal.

In this particular case the settlement has been fully implemented save only for the tax incorrectly withheld by the employer and now being returned by way of cheque lodged the day before the hearing and is awaiting clearance. Should a difficulty arise the claimant has two options available, either to sue in contract on foot of the agreement or to apply in the usual way to the Revenue Commissioners in respect of an overpayment of tax. In any event the matters the subject of the statutory claims before the Tribunal had been compromised and therefore there remained no issue within the jurisdiction of the Tribunal to resolve. The Tribunal having enquired and having been assured that all issues between the parties within its jurisdiction had been compromised therefore deemed all the claims to be withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)