

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE – *claimant 1*

CASE NO.  
UD857/2010  
RP1163/2010  
MN815/2010

EMPLOYEE – *claimant 2*

UD858/2010  
RP1164/2010  
MN816/2010

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. L. Ó Catháin

Members: Mr. P. Casey  
Mr. D. McEvoy

heard this claim in Cork on 16<sup>th</sup> June 2011

Representation:  
\_\_\_\_\_

Claimant(s): Mr Richard Grogan, Richard Grogan & Associates, Solicitors,  
16 & 17 College Green, Dublin 2

Respondent: Mr. John Boylan, McNulty Boylan & Partners Solicitors, 26/28  
South Terrace, Cork

The determination of the Tribunal was as follows:-

## **Preliminary Application**

The claimant's representative requested a postponement of the case on behalf of claimant 2. The respondent's representative said his client would agree to a postponement of the hearing if both claimants agreed to the postponement. The claimant's representative said that claimant 1 flew in to Ireland specifically for the hearing.

The respondent's representative stated that both claims are the same and agreed to allow the tribunal make determinations for both claimants based on the evidence adduced during the hearing.

## **Claimant's Case**

Claimant 1 worked for the respondent from 2<sup>nd</sup> May 2006 until his employment ended on the 18<sup>th</sup> September 2009. The respondent was a sub contractor in a factory in Cork and the claimants worked in that factory skimming and painting walls. The claimant said he was laid off on the 24<sup>th</sup> April 2009, as there was no work and he was told to sign on by (OC), a Director of the respondent. OC told him he would have work for him in a couple of months and he went back to work with the respondent for three months until September 2009. The claimant was told that the factory was closing down but was continuously told by Mr. OC that there would be other work, but there was not.

## **Respondent's Case**

The respondent worked as a sub contractor in a factory in Cork. In April 2009, the factory operator told him that the work in the factory would end. He offered the two claimants work in domestic residences on the same terms but they refused. When he got extra work in the factory he re-employed the claimants. When the work in the factory ended in September 2009, he offered other work to the claimants but they refused and requested their P45s.

## **Determination:**

The Tribunal is not satisfied that the respondent had work for the claimants and finds that the claimants were made redundant. The Tribunal is satisfied that the claimants were dismissed on the

18<sup>th</sup> September 2009 by reason of redundancy and are entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following details:

**Claimant 1:**

Date of Birth: 23<sup>rd</sup> May 1985  
Date of commencement of employment: 2<sup>nd</sup> May 2006  
Date of termination of employment: 18<sup>th</sup> September 2009  
Gross weekly pay: €600.00

**Claimant 2:**

Date of Birth: 4<sup>th</sup> December 1982  
Date of commencement of employment: 13<sup>th</sup> February 2006  
Date of termination of employment: 18<sup>th</sup> September 2009  
Gross weekly pay: €600.00

These awards are made subject to the claimants having been in insurable employment under the Social Welfare Acts during the relevant period.

Claims under the Unfair Dismissals Acts, 1977 to 2007 and the Redundancy Payments Acts, 1967 to 2007 are mutually exclusive. Accordingly the claims under the Unfair Dismissals Acts, 1977 to 2007 fail.

The claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 were withdrawn at the outset.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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