

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO.

EMPLOYEE – *claimant*

UD338/2010  
RP519/2010

against

EMPLOYER – *respondent*

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. D. Donovan

Members: Mr. J. Browne  
Mr. A. Butler

heard this claim in Wexford on 26<sup>th</sup> July 2011

Representation:

\_\_\_\_\_  
Claimant: Mr. Tony Ensor, Ensor O'Connor, Solicitors, 4 Court Street, Enniscorthy, Co  
Wexford

Respondent: Mr. Michael Cullen, Lombard And Cullen, Solicitors, McDermott Street, Gorey,  
Co. Wexford

The determination of the Tribunal was as follows:-

At the outset of the case the claim under the Unfair Dismissals Acts, 1977 to 2007 was withdrawn.

The respondent's representative stated he was instructed not to accept a change to the respondents name on the T1A form.

## **Claimant's Case**

The claimant started working for the respondent as a general labourer in 2004. During his employment he drove the company van and used a wall saw. His normal working hours were 40 per week and he regularly did 10 to 20 hours overtime on top of the basic hours. His basic hourly rate of pay was €16.93.

At the beginning of 2009, work slowed and he was put on 2 - 3 days a week. He was claiming social welfare payments for the other days. In Spring 2009, he was still on reduced hours, and the respondent called him and told him that another company had eight weeks full time work in Dublin. He got in touch with the other company and was told they would need his P45 to hire him. The respondent told him he did not have the money to pay for redundancy but said if work or money came in he would get it.

The work with the other company lasted longer than eight weeks but in December 2009 that began to slow. He went to the Citizens Information Centre and was told that he was entitled to redundancy from the respondent.

## **Respondents Case**

The respondent JB is a Director of the company. Around May/June in 2008, work began to slow in the construction sector and he had to let some of the junior staff go. In January 2009, he had three employees and each was working 2-3 days a week.

He received a phone call from JD, another employer, who asked him if any of his former employees had experience using a wall saw. He told JD that the only guys he knew were his current employees. He mentioned to his employees that JD was looking for people who could use a wall saw. The claimant asked the respondent to pass his number onto JD.

JD phoned the claimant and the claimant came to the respondent and asked him what should he do. The respondent told the claimant if he gave him his P45 that would be it. The claimant said to him, it may be only eight weeks. The respondent said if you are let go by JD and I have any work, I will give you some.

The claimant rang him in January 2010 and asked if there was any work available. He told the claimant, things were slow, and there was no work available. Three days later the claimant telephoned and said he was in the Citizens Information Centre and that he was owed money. He asked the claimant to fax him the details of what he was owed.

## **Determination**

The Tribunal on the application of the claimant amends the name of the employer from John Byrne to John Byrne Building Contractors Ltd. The Tribunal notes the objection of the respondent to the said amendment but also notes, in particular, that the name John Byrne and John Byrne Building Contractors Ltd were both used on correspondence from the respondent accompanying the Form T2.

The Tribunal having carefully considered the evidence adduced at the hearing finds that a redundancy situation existed in relation to the claimant's employment as and from 12<sup>th</sup> May 2009 as a result of a downturn in the respondent's business. The Tribunal finds that the

respondent introduced a potential new employer to the claimant because the respondent did not have sufficient work for the claimant. The Tribunal accepts that the respondent took this course of action in good faith and in an effort to assist the claimant but nonetheless finds that the cause of the claimant's employment ceasing was due to lack of work for the claimant. That the respondent did not have work for the claimant is further supported by the fact that when the claimant contacted the respondent in January 2010 he was told that there was no work.

The claim under the Redundancy Payments Acts, 1967 to 2007 succeeds and the appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007, based on the following criteria:

Date of Birth:	12 <sup>th</sup> August 1974
Date of Commencement:	1 <sup>st</sup> March 2004
Date of Termination:	12 <sup>th</sup> May 2009
Gross Weekly Pay:	€700.00

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

Statutory redundancy payments carry a weekly ceiling of €600.00

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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