

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - *claimant*

CASE NO.
UD2285/2009
WT969/2009
RP2597/2009

against

EMPLOYER - *respondent*

under

ORGANISATION OF WORKING TIME ACT, 1997 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms O. Madden B.L.

Members: Mr. D. Winston
Mr. J. Dorney

heard this claim at Dublin on 25th January 2011

Representation:

Claimant: James Maher & Co., Solicitors, Unit 1, The Bookend, Essex Quay, Dublin 8

Respondent: Patrick F O'Reilly & Co., Solicitors, 9-10 South Great George's Street, Dublin 2

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant gave evidence that he commenced employment with the respondent in 1998 and continued working for them until 17th April 2009. On February 13th 2009 he received notification of a temporary layoff from the 13th March 2009. In the lead up to this there had been mention that there was not much work on and that they may be let go. He continued to work for the respondent after the 13th March 2009 up until he took his Easter holidays. He maintained that he had been informed that there would be no work for him after this.

On his return from his holidays he telephoned the respondent who informed him there was no work available but to ring him in a few days. This he did but there was still no work. As he has a family to support he telephoned Social Welfare and they told him to get his P45 to enable him to sign on. He telephoned the respondent and requested his P45. The respondent told him he would get his P45 ready and to ask his father about redundancy. When he spoke to the respondent's father, he told the claimant that he had left them in the lurch and he was not due redundancy, he did not mention his P45 or that he was on temporary lay off. He was not aware that the respondent had acquired a new contract for work on the 20th April and that there was a job for him, had he

known this he would have continued working.

He received money from the community welfare officer and eventually received his social welfare six weeks later.

Under cross-examination he explained he was not a great reader and had not sought advice on the letter of the 13th February 2009. He took this letter as that there would be no work, every few days this was mentioned. He had only heard about redundancy when he was giving his form to social welfare, JC was with him at the time. He did not accept that the respondent had tried to telephone him on the 20th April as he had work available to him. He had not told the respondent that he was resigning as he was going to work part-time for his father in law and claim social welfare. He had helped his father in law in his pigeon training business but had not got paid for this. When he had met with the respondent on the 9th May 2009 in Artane to collect his P45, the respondent had not told him that his job was still open to him.

When he telephoned the respondent's father he had asked him as to how he had left them in the lurch, but the father had said he didn't want to hear anymore and hung up the telephone.

A JC gave evidence on behalf of the claimant. He worked for the respondent from the 13th April 1998 until 28th February 2009. On the lead up to Christmas 2008 work was getting slack. The respondent's father asked him had he done anything about signing on, and he told him that they had not given him any notice yet. That week he was given his temporary notice. After the third week of his second lay off he had telephoned the respondent and informed him they had to bring his employment to an end and requested his P45 and redundancy forms. When he went to see the respondent's father to get these he had informed him that the claimant was in the same position as himself. This occurred seven weeks after the 28th February. Under cross-examination he insisted that they had discussed the claimant at the meeting with the respondent's father.

Respondent's Case

The respondent gave direct sworn evidence. Their company is a small family run construction business. He took over the running of the company in 2007 from his father. At the end of 2008 work coming in started to decline. They were trying their best to acquire new contracts and were keeping their employees up to speed hence they had issued them with the lay off letters.

They obtained work on short notice in Finglas so he asked the claimant if he could work his Easter holidays, but the claimant was unable to as he had previous arrangements made. He told the claimant he would telephone him before the Monday he was due to return. He tried to telephone the claimant on Friday the 17th April 2009 but the claimant's phone was turned off, and again the next week. He eventually heard from the claimant on the 28th April 2009 (this was noted in his diary a copy of which was produced in to evidence). During this telephone conversation the claimant informed him that he was not returning to work as he was going to sign on and work with his father-in-law and requested his P45. He received no form from the claimant requesting his redundancy.

He praised the claimant by saying he was one in a million, a loyal, presentable worker who had lots of respect for other people's property. Little bits of work kept filtering in and they could have kept the claimant on. Presently it was not possible to re-engage the claimant due to their workload.

They had taken on another employee temporarily to help with a project at the end of March 2009.

He had received no phone call from the claimant on the 20th April 2009 and when he tried calling the claimants phone appeared to be switched off. During the telephone call of the 28th April the claimant had told him he was fed up and going to resign, this was not the first time he had heard this from the claimant. The claimant had picked up his P45 on the 8th May from him in a business park they were working in at the time. He told the claimant that they had work and he could continue to work with them. He had never told the claimant there was no work.

Under cross-examination he confirmed that they normally had a maximum of five employees around Christmas 2008. On the 13th February 2009 when they had issued the letters of temporary layoff they had some small jobs in Chapelizod and no capital. When he had issued the letter to the claimant he told him that they were going to try and push on and get any work. When the claimant came to the business park, he and two others were working on the site, he was short a man as he should have been out trying to generate business and not working on site. This job lasted 3 to 4 weeks. On the 28th April and the 8th May 2009 he had asked the claimant to come back.

The claimant's representative put forward the argument that the letter of layoff with the RP9 attached was never rescinded by the respondent. The respondent's representative never used this RP9 therefore did not give the respondent the ability to counter notice it.

Determination

Having regard to the conflict of evidence adduced at the hearing, the Tribunal conclude that a redundancy situation existed. Therefore finds that the claimant is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following information:

Date of Birth	28 th May 1967
Date Employment Commenced	15 th January 1998
Date Employment Ended	17 th April 2009
Gross Weekly Wages	€572.00

This award is made subject to the claimant having been in insurable employment, during the relevant period, in accordance with the Social Welfare Acts.

The claim under the Unfair Dismissals Act 1977 to 2007 fails and accordingly is dismissed. The claim under the Organisation of Working Time Act 1997 was withdrawn during the course of the hearing.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)