

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

-Claimant

CASE NO.
UD973/2010

RP1346/2010
MN945/2010

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 N. Russell

Members: Mr J. Horan
Ms S. Kelly

heard this claim at Carlow on 12th July 2011

Representation:

Claimant:

Respondent: Mr. Jim Healy, IBEC, Confederation House,
Waterford Business Park, Cork Road, Waterford

The determination of the Tribunal was as follows:

The claim under the Unfair Dismissals Acts, 1977 to 2007, was withdrawn at the outset of the hearing.

The respondent company makes chilled and frozen fruit products for distribution. The claimant commenced employment on 4th April 2007 as a general operative. The claimant was one of two employees based in the frozen food section of the business.

The Factory Manager gave evidence that the nature of the business is seasonal and from April to September is very busy. From September onwards the level of business decreases and the entire production team is placed on short time until the level of business increases. However, January 2010 was even quieter than usual due to the economy and the company suffered a 42% reduction in the frozen food section of its business. The Factory Manager was forced to select either the claimant or her colleague for temporary lay-off. The claimant was selected as she had lesser service than her colleague.

The claimant and the Factory Manager met on 22nd January 2010 and the claimant was offered a translator but she was content to proceed with the meeting without someone to translate. It was the Factory Manager's evidence that he informed the claimant that she was being placed on temporary lay-off due to a lack of work and that the claimant had become angry and walked out of the meeting. He had prepared a letter for her stating that due to the seasonality of the business she was being placed on temporary lay-off but that it was hoped in due course that she would return from temporary lay-off when the workload increased. As the claimant left the meeting he posted the letter to her.

It was the claimant's evidence that she did not receive this letter. It was the claimant's case that on 22nd January 2010 the Factory Manager had informed her that she would no longer be working with the company as there was a lack of work and that a P45 would be forwarded to her. The claimant was unsure if she had understood correctly so in order to have what was said confirmed to her, she attended at the respondent's premises on 26th January 2010, accompanied by her son who has a very good understanding of the English language. It was confirmed to them that she had been dismissed and that a P45 would be forwarded to her in the post.

It was the claimant's evidence that she did not contact the company after that date, as she felt she had been dismissed. She confirmed that a number of weeks later the Factory Manager had telephoned her with an offer of work but the claimant was ill at that time.

The Factory Manager gave evidence that during the middle of February the company received a number of larger orders. He telephoned the claimant to explain that work was available to her but he was informed that the claimant was ill. On a number of other occasions he telephoned the claimant but his calls were unanswered. He wrote a letter dated 18th February 2010 to the claimant informing her that the company was in a position to offer her a resumption of work following her recent temporary lay-off. He sent the letter to the claimant by registered post but he did not receive a response. The company also completed a form for the social welfare office stating that the claimant had been placed on temporary lay-off but was subsequently offered work.

During cross-examination he confirmed receiving a letter from the claimant's representative but he did not respond to the contents of the letter as the claimant's position was still available to her and she had been informed of this by the letter dated 18th February 2010.

In reply to questions from the Tribunal, the Factory Manager stated that the company has approximately 50 employees. Some 20 employees are employed in production and all of the production staff were on short time at the time of January 2010. The claimant was the only employee in that section placed on temporary lay-off but a number of staff in the administration section were also placed on lay-off.

The Accounts Manager gave evidence that she recalled that the claimant's son had attended at the office and requested a redundancy payment for the claimant. The Accounts Manager confirmed to him that the claimant had not been made redundant. To date the claimant remains on the payroll.

Determination

Claimant was not dismissed nor made redundant, therefore the appeal fails. Minimum Notice claim also fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)