

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM(S) OF:**  
EMPLOYEE- *claimant*

**CASE NO.**  
RP1293/2008  
MN1393/2008  
UD1444/2008

against

EMPLOYER- *respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**  
**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**  
**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J Flanagan BL  
Members: Mr R Murphy  
Mr P Woods

heard this claim at Dublin on 17<sup>th</sup> April 2009

Representation:

Claimant(s): Mr. Blazej Nowak, Polish Consultancy Enterprise,  
19 Talbot Street, Dublin 1

Respondent(s): Mr Stephen Sands, Construction Industry Federation,  
Construction House, Canal Road, Dublin 6

The determination of the Tribunal was as follows: -

### **Claimant's Case**

The claimant is a Polish speaker and gave evidence through an interpreter. On 18<sup>th</sup> September 2008 the claimant was asked to come into the office along with a fellow employee who is the claimant's cousin. The claimant's cousin acted as a translator. In the course of a conversation with the manager the claimant was informed that he should look for another job as he may be gone in one week. The claimant's cousin explained to him that he was only going to work for one week more and then he should look for another job.

On 26<sup>th</sup> September 2008 the claimant asked for his P45 because he had been told to look for other work and at this stage he did not have new employment. The claimant commenced work with a new employer and received his first weekly payslip from this company on 12<sup>th</sup> October 2008. The payslip was produced before the Tribunal in evidence.

The respondent wrote to the claimant on 2<sup>nd</sup> October 2008 acknowledging the claimant's resignation and enclosing his P45. The claimant never received this letter as he had moved from his original address. The respondent wrote to the claimant again on 24<sup>th</sup> October 2008 outlining the respondent's position that the claimant had been informed that there was a slow down in work and that he may have had his hours cut in the future. In this letter it was also stated that the claimant had chosen to look for another job and had terminated his employment by way of resignation and therefore the claimant was not entitled to redundancy. The claimant accepted that he had received this letter.

Under cross examination the claimant said that he had been given one weeks notice on 18<sup>th</sup> September 2008 and did not query this with the respondent. The claimant was aware that other employees had meetings with the manager around this time but he did not know what had transpired at these meetings. The claimant had changed his address on 2<sup>nd</sup> May 2008 and had informed the respondent of this change. However the claimant's new and old address were in the same complex.

The claimant had contacted the company after he had received the letter dated 2<sup>nd</sup> October 2008 because he wanted his redundancy pay. The claimant stated that he did not choose to leave but was dismissed. The claimant had been told that he would only work until the next Friday. It was put to him that his cousin who had acted as an interpreter for him was still employed by the company and that if he had contacted the respondent for clarification the situation could have been resolved. It was put to the claimant that the reason that he had left his employment was that he had a new job that would pay him more money. The claimant rejected this suggestion and reiterated that he had been dismissed.

In replying to questions from the Tribunal the claimant confirmed that present at the meeting on 18<sup>th</sup> September 2008 were his cousin, a director, the manager and himself. There had been some conversations between other employees about the meetings with the manager and director, however as far as he knew no other employees were told that they were being made redundant. Subsequent to the meeting on 18<sup>th</sup> September 2008 the claimant had worked for eight days at different sites. The claimant had been upset that he was being let go, he had informed his colleagues about his situation and they had tried to comfort him. The claimant had not asked his colleagues if they had been made redundant. Another employee left two weeks after the claimant. There had been between 15 to 18 people employed by the respondent, ten in the same role as the claimant. Other employees had commenced employment with the respondent after the claimant had been let go. The date on the P45 is 26<sup>th</sup> September 2008 but the claimant had worked Saturday 27<sup>th</sup> September 2008 painting and Sunday 28<sup>th</sup> September 2008 waxing. On Monday 29<sup>th</sup> September 2008 the claimant had gone to the office to get his P45. The claimant had sought his new job after his last day with the respondent.

## **Respondent's Case**

The operations director of the company gave evidence on behalf of the respondent. He explained that the company specialised in laying resin and concrete floors. Their contracts tended to have a short lead time and can also be short in duration. At the time of the meeting on 18<sup>th</sup> September 2008 the respondent had not received sufficient confirmations of orders to maintain full time work for their employees in the forthcoming weeks. The respondent decided to inform its employees of the situation in that there may be short time working from Monday to Friday. However the respondent felt it could achieve a thirty-nine hour working week over the seven day week as the respondent

had work in factories and other premises on Saturdays and Sundays. A number of employees were requested to attend the office on 18<sup>th</sup> September and at no stage was redundancy mentioned to any of them.

On Monday 29<sup>th</sup> September 2008 the claimant was rostered to work but did not arrive. The claimant called to the office at about 11am and asked for his P45 and told them that he had a new job. The respondent had indicated to the claimant that he still had employment with them as he was rostered to work. Their parting was amicable and the claimant had thanked them.

The letter of 24<sup>th</sup> October 2008 had been sent because the claimant's cousin had approached the operations director and informed him that the claimant was looking for his entitlements or compensation. The operations director had explained to the claimant's cousin that the claimant had left of his own accord therefore the claimant was not entitled to any compensation or redundancy. The operations director had heard nothing from the claimant after this letter was issued. There were no redundancies in the company until the end of February 2009.

Under cross examination the operations director denied dismissing the claimant and answered that the claimant had informed the respondent on Monday 29<sup>th</sup> September that he had a new job with one of their competitors. This competitor has poached three of their staff as specialised skills are required and the respondent had trained its employees in these skills.

### **Determination**

The Tribunal having carefully considered all the evidence adduced at the hearing prefers the evidence of the respondent. The Tribunal finds that the claimant resigned his position with the respondent and therefore his claims under the Redundancy Payments Acts, 1967 to 2007 and under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fail.

The claim under the Unfair Dismissals Acts, 1977 to 2007 had been withdrawn at the commencement of the hearing.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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