

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

UD1326/2003

against

MN2716/2003

Employer

under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr. M. Forde  
Mr. D. McEvoy

heard these claims at Thurles on 5 February  
and Dundrum on 29 May 2007

Representation:

---

Claimant:

Mr. Robert Dore, Dore & Company, Solicitors,  
2 City Gate, Bridge Street, Dublin 8  
on the first day, in person on the second day

Respondent:

Ms. Deirdre Lyons, Butler Cunningham & Molony, Solicitors,  
71 Liberty Square, Thurles, Co. Tipperary

The determination of the Tribunal was as follows: -

#### **Claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001**

The claimant was dismissed and did not receive either prior notice of his dismissal or payment in lieu of notice from the respondent, as he claims was his entitlement.

It was the respondent's case that the claimant was dismissed for gross misconduct and accordingly, under section 8 of the Minimum Notice and Terms of Employment Acts, he had no entitlement to either prior notice or compensation.

#### **Determination**

At an earlier sitting the Tribunal determined that it did not have jurisdiction to hear the claim for unfair dismissal as it was lodged outside the prescribed statutory six-month period and the circumstances giving rise to the late lodgement of the claim did not constitute exceptional circumstances so as to allow the Tribunal to exercise its discretion to extend the period for lodging the claim (Determination dated 14 March 2007). None the less the Tribunal must hear evidence on the dismissal to determine whether, having regard to section 8 of the Minimum Notice and Terms of Employment Acts, the claimant is entitled to payment in lieu of notice.

The claimant's representative did not attend the hearing, although he had spoken to both the claimant and the respondent's representative about the matter within the two weeks immediately prior to the instant hearing. The claimant was unwilling to proceed without his representative. The respondent objected to an adjournment on the grounds that the respondent and its witnesses, two of whom were in attendance under witness summonses, were present and ready to proceed

The Tribunal is satisfied that the claimant's representative was on notice of the hearing and having taken note of the facts herein refused to adjourn the hearing. Accordingly, the Tribunal dismisses the claim under the Minimum Notice and Terms of Employment Acts 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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