

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD1399/2005
RP623/2005
MN1064/2006
WT2/2006

against

Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2004
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Halpin B.L.

Members: Mr. P. Pierson
Mr. S. O'Donnell

heard this claim at Portlaoise on 31 January
and 28 March 2007

Representation:

Claimant:

In person

Respondent:

Mr. Frank McCormack B.L. instructed by
Mr. Peter McKenna, McKenna Durcan Solicitors,
66 Lower Leeson Street, Dublin 2

The determination of the Tribunal was as follows: -

The respondent, which operates a hotel, employed the claimant from March 2002. Apart from early 2005 when the claimant stayed on holiday in Russia, his native land, beyond the time arranged with the respondent the employment was uneventful until October/November 2005. The claimant was involved in maintenance duties in the hotel and over the winters of 2002/3, 2003/4 and 2004/5 was

involved in the respondent's room refurbishment programme. The claimant's particular field of expertise is as a tiler. Two others were employed on maintenance duties, one a retired person in a part-time capacity, but both with more service than the claimant.

The respondent's position was that as it had been decided not to carry out any refurbishment work over the winter of 2005/6 then it was necessary to reduce staffing levels and accordingly the claimant was selected for redundancy. The claimant's position was that he was dismissed following a series of incidents whereby the claimant took exception to trees being felled in the grounds of the hotel. As a result of the claimant's disapproval of the tree felling he contacted the relevant authorities. When neither of these authorities took any immediate action he contacted two local journalists and the matter received attention in two local newspapers. In the event the authorities found nothing out of order about the tree felling. The claimant was told that his position was redundant on 18 November 2005 and left the employment that day. The respondent's position was that when work picked up they would have considered hiring the claimant in the spring of 2006.

Determination

Having considered all the evidence the Tribunal is not satisfied that a prima facie redundancy situation existed. That being the case it must follow that this was an unfair dismissal. The Tribunal notes that in implementing the redundancy process the respondent did not observe best practice in relation to notification and other matters directly relating to redundancy pay. Having regard to the manner in which the claimant sought to mitigate his loss the Tribunal is not satisfied that the claimant actively pursued job vacancies. Having regard to the fact that the claimant has already received an amount in respect of redundancy and taking into account the claimant's contribution to his dismissal the Tribunal considers it fair and reasonable to award €1,500-00 under the Unfair Dismissals Acts, 1977 to 2004. The Tribunal having determined that this is an unfair dismissal a claim under the Redundancy Payments Acts, 1967 to 2003 does not arise because they are mutually exclusive. The evidence having shown that the claimant received his entitlements under the Minimum Notice and Terms of Employment Acts 1973 to 2001 the claim under those acts must fail. The claim under the Organisation Of Working Time Act, 1997 fails for lack of evidence.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)