

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD288/2006, MN161/2006
WT111/2006

against

Employer

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2001 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: Ms. K. T. O' Mahony B.L.

Members: Ms M. Sweeney
Mr D. McEvoy

heard this claim at Killarney on 12th March 2007

Representation:

Claimant : Mr. Andrew McCarthy, SIPTU, Connolly Hall, Upper Rock Street, Tralee, Co. Kerry

Respondent : Mr Joe Mannix, Mannix & Co, Solicitors, 12 Castle Street, Tralee, Co Kerry

The determination of the Tribunal was as follows:

The Tribunal is satisfied that the respondent was properly notified of this hearing. Neither the respondent nor a representative on its behalf appeared for the hearing. The Tribunal adjourned the hearing for one hour to allow the respondent or its representative, whom it contacted to appear. The Tribunal is satisfied that every reasonable effort was afforded to the respondent or a representative on its behalf to attend the hearing. The hearing proceeded following the elapse of the adjourned period.

Claimant's Case

The claimant commenced employment as a porter in June 2004. He performed a wide range of duties including cleaning, attending to guests' needs and general maintenance of the hotel. His working hours were recorded on a roster sheet and they fluctuated between six and twenty eight hours a week. A change of ownership occurred during his period of employment. The general manager told the claimant that the new owner did not want him to remain on as an employee. His hours were reduced when that owner took over the hotel. The claimant reported for work as rostered on 22 June 2006 but sometime into that shift the general manager, acting on instructions of

the owner, informed him that he was fired. The claimant produced a copy of the relevant roster sheet, which had his rostered shifts crossed out and the word “fired” entered against his name. The witness was unclear about his holiday entitlements but felt he was owed a week’s outstanding leave.

Respondent’s Case

The respondent did not appear to defend the claim.

Determination

The claimant established to the satisfaction of the Tribunal that the respondent dismissed him on 22 June 2006. The respondent was duly notified of the claim and entered Form T2 indicating its intention to defend the claim. The Tribunal is satisfied that the respondent was duly notified of the hearing of the claim but none the less failed to attend the hearing to defend it. Accordingly the Tribunal, pursuant to subsection (1) of section 6 of the Unfair Dismissals Acts, 1977 deems the dismissal unfair. The Tribunal awards the claimant €6,058.00 as compensation under the Unfair Dismissals Acts, 1977 to 2001.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 succeeds and the appellant is awarded € 233.00 being one week’s compensation under those Acts.

The Tribunal accepts the appellant’s evidence in regard to his holiday pay. Therefore he is awarded €233.00 as compensation under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

