

EMPLOYMENT APPEALS TRIBUNAL

Claim Of:

Employee

against

Employer

under

Case No.

MN1031/2005

WT475/2005

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. L. Ó Catháin
Members: Ms. M. Sweeney
Mr. J. McDonnell

heard this claim at Waterford on 13th February 2007

Representation:

Claimant: Ms. Finola Cronin, Dobbyn & McCoy, Solicitors, 5 Colbeck Street, Waterford

Respondent: Mr. Neil Breheny, Neil J. Breheny & Co., Solicitors, 4 Canada Street, Waterford

The decision of the Tribunal was as follows:

The Tribunal heard dismissal was in dispute.

Claimant's Case:

The claimant commenced employment with the respondent on the 4 January 2005 as a sales manager. His initial salary was €26,000 but this increased to €28,000. In May 2005 the claimant went on holidays. He worked Monday, the 23 May 2005. His flight was on the evening of the 23 May 2005. The claimant was back in work the following Tuesday, 31 May 2005. He had taken five days holidays.

The claimant purchased a new house in February/March 2005. When he sold his old house he applied for holidays for the last week in July 2005, returning to work on the Tuesday following the August bank holiday weekend.

On the Thursday before his holidays in July, Mr. C phoned him and asked the claimant to meet him in Clonmel, which he did. Mr. C told the claimant that he knew he was looking for a job. The claimant replied he had enough to do with the new house without looking for a job. Mr. C told the claimant he could not take his annual leave the following week. The claimant said that he had notified Ms. S in the office about his annual leave. Mr. C replied he had only found out that

morning that he had work for the claimant to do. The claimant offered to start the work that day and finish it on Friday before he commenced his holidays. The claimant and Mr. C separated to do work in different locations. The claimant went into work on the Friday. He took his holidays the following week.

When the claimant returned from his holidays he was contacted by Mr. C, who asked the claimant to meet him in his office. In the office Mr. C said to the claimant "you took your holidays". The claimant replied he did because he had to. Mr. C said the claimant had gone against him and that the claimant was not wanted anymore.

After this discussion the claimant's wife collected him. The claimant was in shock after what had happened and he took his work mobile phone with him by mistake. The claimant was later contacted to say that the mobile phone was needed and the claimant returned the mobile phone. The claimant believed that a new sales manager had started work straight away.

The claimant told the Tribunal that when his employment commenced Mr. C told him if he had any general problems he was to speak to Ms. S in the office. Mr. C told the claimant that they would meet once a week. The claimant was not given notice that his employment was ending. The claimant stated he was owed one-week's minimum notice and 3.66 days holidays.

During cross-examination it was put to the claimant that one holiday day was in dispute between the parties. It was put to the claimant that the respondent's records showed the claimant had taken holidays in May that included the 23 May. The claimant denied this saying that he had worked the date and flown out that evening. The claimant also stated that he had given prior notice of his holidays to his employer.

The issue of the claimant's review was raised. It was put to the claimant that he had not been happy with his review and had threatened to leave.

Answering questions from the Tribunal the claimant stated he had taken ten days holidays. At the time of July 2005 the claimant had an entitlement to 11.66 days holidays. The claimant stated that he had taken 10 days holidays, which left a remaining 1.66 days. He was due one day for the August bank holiday and one day for the day of his dismissal.

The first time the claimant was told there was a problem with his holidays was the Thursday before his holidays were due to begin.

Respondent's Case:

Mr. C told the Tribunal that if anyone wishes to take holidays they contact Ms. S in the office who records the holidays. This has been the process for years.

When Mr. C asked the claimant to meet him in Clonmel, Mr. C had only found out that morning that the company had secured a contract worth €1 million. The contract was due to start on the 23 July 2005. The contract involved the company doing a daily delivery service. The company would also have to canvass a large number of businesses. Mr. C told the Tribunal the claimant's sales figures were discussed at the meeting in Clonmel.

Mr. C was not aware the claimant had holidays booked until someone informed him. Mr. C rushed to Clonmel to speak to the claimant. The claimant said that he had his holidays booked for a long

time. M. C said to the claimant he would have known there was a contract. Mr. C told the Tribunal he did not say that the claimant could not take holidays but he did ask the claimant to reconsider.

The company had needed the claimant's work mobile phone while the claimant was on holidays but the claimant had brought the phone with him. After the claimant's holidays Mr. C asked the claimant to meet him. Mr. C had not even spoken to the claimant for three minutes when the claimant jumped up and went out and cleaned out his car. Mr. C asked the claimant was he going home. The claimant replied that he was and Mr. C offered him a lift. The claimant refused the lift home and he seemed flustered to Mr. C. Mr. C thought that the claimant might come back when he calmed down. Mr. C said the claimant had a tendency to panic. Mr. C categorically did not dismiss the claimant. There was solid work there for the claimant for the next six or eight months.

During cross-examination Mr. C said he was unaware of the reason that the claimant needed holidays in July. It was put to Mr. C that it was incredible the claimant would have walked out on his job when he had just bought a house. M. C replied it may not be credible but it was done in the spur of the moment. It was put to Mr. C it was his own fault that he had not appraised himself of the holiday leave spreadsheet. Mr. C said if the claimant had told Ms. S in the office certain dates he was taking holidays he would not dispute them.

Answering questions from the Tribunal Mr. C could not recall whether or not the claimant worked the 23 May 2005. As the claimant proceeded to take his holidays when the large contract was starting Mr. C had to get someone else to do the work that week. This person later started work with the respondent but as a van driver not as a sales manager.

Determination:

The Tribunal finds that there was a total conflict of evidence with no corroborative evidence on either side. Due to the lack of effort on the company's part to seek clarification regarding the situation of the claimant the Tribunal are of the view that the claimant is entitled to one week's minimum notice, €558.40 (equivalent to one week's gross wage) under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

The Tribunal accept that the claimant worked the day of the 23 May 2005. Therefore, the Tribunal finds that the claimant is entitled to €408.75 in lieu of 3.66 days holiday pay under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)