

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

CASE NOS.

UD1205/2006
MN795/2006
WT377/2006

Against

2 Employers

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr J. Horan
Mr A. Butler

heard this claim at Dublin on 25th June 2007

Representation:

Claimant : In person

Respondent: Mr. Breffni O'Neill, Construction Industry Federation, Canal Road, Dublin 6

The determination of the Tribunal was as follows:-

Respondent's Case:

The Director of the respondent company responsible for industrial relations told the Tribunal that the claimant was employed as a Plant Operator from 13/12/04 to 23/10/06. The claimant worked on the Dublin Port Tunnel and was let go as the work on the tunnel had come to an end. The claimant's employment was governed by the registered agreement for the construction industry.

He was paid his holiday and minimum notice entitlements. Copies of the claimant's payslips and holiday entitlements were passed to the Tribunal. The claimant received and accepted the Site Engagement Employment Conditions.

Claimant's Case:

The claimant told the Tribunal he reported for work on 23 October 2006. He was told there was no work for him but he was told to clean his truck and he stayed till 5 pm. The following day he reported for work and spoke to the Accountant who informed him that he was no longer employed by the respondent. No one told him directly that he was no longer employed by the respondent. He was paid for that week in lieu of notice. There were still employees working in the company when he left.

Determination:

The company failed to keep the employee abreast of developments on site. They failed in particular to notify the employee that the work was either drawing to, or had come to, an end. Notification through the payslip was unacceptable.

The Tribunal is mindful of the particular idiosyncrasies that operate on construction sites but cannot accept that there is no obligation on the employer when it comes to effecting a fair dismissal.

The onus is on the employer in the unfair dismissal legislation to show that their termination was not unfair. In this instance, the company purports to say that this termination is not unfair by reason of a redundancy.

The company failed to show a genuine redundancy in a situation where the cleaning and sweeping work continued after 23rd October 2006.

The Tribunal does accept that the work would have ultimately become redundant at some time between October and the tunnel opening in December 2006.

The Tribunal notes on-site practices wherein the employee did not seem to know to whom he could talk and from whom he could take instruction – it is noted that the company was also in the throws of a take-over which may explain why there was such confusion at the time.

The Tribunal notes that the company failed to explain how an employee's job could go from seven days a week to zero days a week. In the ordinary course, the company should surely have looked at the option of reducing hours or operating short time for one of its employees.

The Tribunal is satisfied that the claimant received both his holiday pay and minimum notice entitlements. Therefore, the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and Organisation of Working Time Act, 1997 fail.

In the circumstances, the Tribunal finds in favour of the claimant under the Unfair Dismissals Acts, 1977 to 2001 and awards him €1500.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

