

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

WT36/2007
UD141/2007

Employer

under

ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr. C. Ormond
Ms M. Maher

heard this claim at Dublin on 29th June 2007

Representation:

Claimant(s): Mr. Michael Binchy BL instructed by Mr. Mark Tiernan, Tiernan & Co., Solicitors,
144 Lower Baggot Street, Dublin 2 and
Mr. Bart Symkow, Tiernan & Co. Solicitors 144 Baggot Street, Dublin 2

Respondent(s) No representative or attendance by or on behalf of the respondent.

The determination of the Tribunal was as follows:-

Preliminary Issue

The claimant told the Tribunal that his employment ended with the respondent on 9 June 2006. He sought advice from a lawyer at the Polish Cultural Centre and he was told about unfair dismissal and described everything that would happen. After six weeks he tried to contact a lawyer at the Polish Cultural centre but he was unable to contact him. The claimant could not speak English and he had a difficulty in contacting an Irish lawyer. The Polish Cultural Centre, which was located near the city centre, had closed down. He was not sure if it was October or November 2006 that he contacted the lawyer. It took time to collect payslips and the information that he required to process his claim. He had major problems in finding a Polish lawyer to represent him.

Determination on Preliminary Issue

The Tribunal heard evidence that the claim was not lodged within the requisite time frame of six months as laid down under Section 8(2) of the Unfair Dismissals Act 1977, due to the fact that the claimant had a difficulty in contacting a lawyer and compiling the information that he needed to present his case. The Polish Cultural Centre had also closed down. The Tribunal finds that there were exceptional circumstances, which prevented the claim from being lodged within the six-month time limit, and the Tribunal has jurisdiction to hear the case

Substantive Issue

Claimant's Case

The claimant told the Tribunal that he worked fifty-five hours a week and he also drove a bus to and from work. He drove the bus from Monday to Friday and he also drove the bus on Saturdays.

From Monday to Saturday he left his home at 6.30a.m and collected colleagues on his way to work. It was 8p.m. when he returned home after dropping colleagues off. Traffic was lighter on Saturdays and he left his house at 7a.m. and returned home at 2p.m. In February 2006 he was in receipt of €14 an hour. The bus that he drove to work was in very poor condition and he reported this to the manager. He was not supposed to drive a bus to work with "no brakes". The manager told him that the bus was fine to drive. His colleagues told him that if he was dismissed that they were dismissed also. The employer told him he would try to change the bus but he never did.

The claimant was notified on 9 June 2006 that there was no work available for him and that when work became available he would be contacted. The claimant stated that at this time there was a considerable amount of work to be undertaken on a project in Dublin. Construction was also taking place in other areas in Dublin and outside of it. The project in Dublin took a further three months to complete. The claimant was not aware if the company was recruiting carpenters at this time. He asked the foreman for his holiday money and bank holiday pay on numerous occasions and he was informed that he was not going to be paid. The foreman bought new equipment for the company at this time.

Determination on Substantive Issue

On the uncontested evidence of the claimant the Tribunal finds that he was unfairly dismissed. He is entitled to compensation of €4,200 under the Unfair Dismissals Acts, 1977 to 2001. The Tribunal heard evidence from the claimant that he did not receive any pay for holidays or bank holidays so he is therefore entitled to compensation in lieu of twenty days holidays totalling €4,200 and compensation of €1890.00 in lieu of nine bank holidays under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

