

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

UD186/2006

MN105/2006

against
Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr. B. O'Carroll
Mr. T. Kennelly

heard this claim at Galway on 24th May 2007

Representation:

Claimant(s) : Mr. Michael Kilcoyne, S I P T U, Galway No. 1 Branch, Forster Court, Galway

Respondent(s) : Mr. Tommy Taylor, 22, Cypress Park, Dublin 6w.

The determination of the Tribunal was as follows:-

Respondent's Case:

A director of the respondent company gave evidence.

On his return from annual leave and having contacted the office he was made aware by the then Labour Manager that the claimant was being paid €22 per hour to work as a banks man/crane driver on a site for a client in Athlone. The claimant had been previously paid €15.90 per hour for working on site in Galway.

The following day, a Saturday, he contacted the claimant by telephone to discuss the rate of pay he had been paid the previous week for work completed on a site in Athlone. He told the claimant that the job was his but the respondent company could not afford to pay him the rate of €22 per hour as their client was paying the respondent company €4 more per hour for the contracted staff. He offered the claimant €17 per hour plus travel plus "greasing" time but the claimant said he was not interested in keeping the job at that rate and told him to "shove" the job. The witness told the Tribunal that he felt the claimant would not turn up for work the following Monday. The witness said that that the claimant had been a very good employee and was sorry to see him go.

When asked he said that he had responsibility for wage rates negotiated in the western region.

On cross-examination the witness said that the Labour Manager reported to him but if he, the witness, was not around the Labour Manager would make decisions. When asked, he said that he could not remember the exact wording of the conversation with the claimant but said that he had not told the claimant that he could easily be replaced. When put to him, he said that he had not told the claimant that he could be easily replaced. He added that he was not aware if the claimant had been replaced in his previous position in Galway as it was his clients site. When put to him, he said that he had not made arrangements to get the keys of the crane in Athlone to be collected from the claimant. He told the Tribunal that he had acquired a replacement for the claimant for the work for Monday.

Claimant's Case:

The claimant gave evidence.

He stated that he had been employed as a banks man/crane driver by the respondent. He explained that his boss on site was the respondent's client but the Labour Manager paid him every Friday. The Labour Manager asked him would he move site to Athlone. The claimant checked out the cost of accommodation in Athlone and returned to the Labour Manager and told him he would need an increase. Having checked with the client, the Labour Manager informed him that the increase to €22 per hour was agreed. The claimant worked in Athlone from Monday to Friday that week. The following day, he received a call from the respondent's witness telling him that he was not paying the wage rate that had been previously agreed. The claimant asked if he, the Director, wished him to work in Athlone on Monday was told no and the Director hung up the telephone.

On the following Monday morning he received a telephone call from the Labour Manager requesting the keys of the crane in Athlone. The claimant asked if they had another crane driver and was told yes. The claimant told the Labour Manager to get the crane driver to contact him and he would tell him where the keys were. The new driver rang the claimant and was told where the keys were. The new driver informed the claimant that he had been told of the job in Athlone the previous Wednesday. When asked, the claimant said that the Labour Manager had told him the Director had returned from annual leave and "freaked" when told of the claimant's new rate of €22 per hour.

The claimant gave evidence of loss.

On cross-examination the claimant stated that he had not told the Director to "shove his job". The conversation on Saturday morning had lasted about a minute. He refuted the Director's evidence of the telephone call. He had resigned from his position.

When asked by the Tribunal, the claimant said that he would have been prepared to return to work in Galway at the previous rate of pay of €15.90 per hour.

Determination:

On hearing the conflicting evidence from both parties, the Tribunal finds in favour of the claimant. However, the Tribunal finds that the claimant did not mitigate his loss.

Accordingly, the Tribunal awards the claimant €32,000 under the Unfair Dismissals Acts, 1977 to

2001.

Loss having been established the Tribunal awards the amount of €798.75, this being one week's gross wages, under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)