

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

WT37/2007

UD142/2007

Against

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

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 the lawyer at the 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 2005 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.

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

The claimant told the Tribunal that he was notified on 9 June 2006 that there was no work available 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. Other construction was taking place 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 €3,080 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 €3080.00 and compensation of €1386.00 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)

