

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

RP591/2006
UD1145/2006
MN753/2006

Against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms M. McAveety

Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this claim at Sligo on 17th July 2007

Representation:

Claimant(s): Mr. Anthony McCormack, SIPTU Sligo Branch, Hanson Retail
Park, Cleveragh, Sligo

Respondent(s): XXXX

The determination of the Tribunal was as follows:-

Respondent's Case

The owner of the respondent company KC outlined to the Tribunal the claimant's absenteeism over the past three years. In 2002 the claimant was absent for eighteen days, in 2003 he had a total of twenty-three absences and in 2004 the claimant was absent for thirty-six days. He gave the claimant numerous verbal warnings. In October 2004 it was brought to his attention that the respondent was losing money and he was advised to reduce labour. He was aware that the claimant was undertaking other work and the claimant suited himself. The claimant worked more as a contractor than an employee. KC was advised to get rid of direct employees and to subcontract the work and he felt that this was less pressure for him. He stated that he paid the

claimant his money and a Christmas bonus. If the claimant did not report for work KC telephoned him but the claimant had his mobile telephone switched off. He paid the claimant for days that he did not work. The claimant then commenced working for his brother as a subcontractor. He did not serve the claimant with a redundancy notice. KC presently does not have staff working for him. He sent a letter to all staff on 1 November 2005 advising that from Friday 11 November 2005 he would be subcontracting all work and each person could stay on as a subcontractor.

In cross-examination when asked if he had a written contract of employment for the claimant he responded that the claimant commenced employment on a trial basis. When asked if he provided terms and conditions of employment he replied that he organised a safe pass course for him. The claimant occasionally worked on Saturdays until 2 or 3p.m and he did not work every Saturday. The claimant received a cheque every week. When asked if the claimant was paid for overtime he responded that he was paid for any time that he worked. He always paid fair rates to employees. When asked why he tolerated the claimant's poor attendance for ten and a half years he replied that he was foolish. When asked if the claimant was in a pension scheme he responded that he gave him the option by the claimant did not want to join the scheme. He paid the claimant while he was ill.

Claimant's Case

The claimant told the Tribunal that he was employed for ten and a half years with the respondent and he undertook a variety of tasks including the initial stage of building a house to its completion. He undertook work on roofing and second fixing. He worked from 8.30.am. until 5.30p.m. five days a week and on occasion he worked on Saturdays. If he worked on Saturdays he took Monday off. He received two weeks annual leave at Christmas and one during the summer. He did not receive payslips or a written contract of employment and the respondent did not have grievance procedures or disciplinary procedures in place. He attended a safety pass course. His employer told him that no other employer would tolerate his level of absenteeism. As far as he could recall he received a pay increase once a year. When he was let go he received €5000 from his employer and he thought that was what he was entitled to. He found out later that he was entitled to more money and he sought to get the balance but his employer refused to pay him.

In cross-examination when asked why did he sign for €5000 he replied that he thought it was all that he was going to get. He was asked why sign for it if he thought he was entitled to more he responded that he came to the Tribunal to obtain the remainder. When asked when was it agreed that if he worked on Saturdays that he did not have to work on Mondays he replied it was word of mouth from the start. When questioned that he never worked on Monday and Saturday in the same week he replied that he did now and then. He did not receive overtime pay if he worked on Saturday. He obtained advice from the Citizens Information Centre regarding his entitlements. He accepted that he lodged his claim in the Employment Appeals Tribunal before he received €5,000. When asked what he did after 11 November 2005 he responded that he helped his brother a week or two later.

He earned approximately €200 while working with his brother. When asked that KC offered him work as a sub contractor he responded that he insisted that he leave. KC told him that the opportunity for him to work was there if he wanted to pursue it.

Determination

The claim under the Unfair Dismissals Acts, 1977 to 2001 was withdrawn prior to the hearing. The Tribunal is satisfied that no genuine redundancy situation existed.

There was a change in the workplace, which was brought about by the conduct of the employee Therefore his claim under the Redundancy Payments Acts, 1967 to 2003 fails.

The claimant told the Tribunal that he did not receive holiday pay but no claim was lodged in relation to holiday pay.

The claimant was entitled to six weeks minimum notice. He told the Tribunal that he received two weeks minimum notice and he worked for three weeks of his notice at a weekly rate of pay of €200.00, which was below the national minimum wage of €7.65 per hour in 2005 (€306.00 per week). He is therefore entitled to the balance of €106 per week (€318 for three weeks) and oneweek's gross pay of €455.00 and his total compensation is €773.00 under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

