

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

MN315/2006
WT155/2006
UD496/2006

against

Employer

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: Mr J. Sheedy

Members: Mr. M. Forde
Mr J. McDonnell

heard this claim at Cork on 24th September 2007

Representation:

Claimant :

Mr Michael McGrath, BL, instructed by Ms. Kay Toher, Vincent Toher & Co.,
Solicitors, Legal Chambers, 2 Washington Street West, Cork

Respondent :

Mr Dermot Sheehan, BL, instructed by Mr. Noel Doherty, Fitzgerald Solicitors,
6 Lapps Quay, Cork

The determination of the Tribunal was as follows:-

Preliminary issue:

At the outset a preliminary issue was raised as to the Tribunal's jurisdiction to hear this case as counsel for the respondent contended that the claimant did not have the required one years' continuous service as stipulated under section 2(1)(a) of the Unfair Dismissals Acts 1977 to 2001. It was the respondent's case that the claimant commenced his employment on 14th March 2005 and his employment ceased on 6th March 2006. The claimant's case was that his employment commenced on 28th February 2005 and his employment ceased on 6th March 2006. The Tribunal heard evidence from both parties as to the claimant's length of service.

Claimant's case:

The claimant was unsure as to the date he commenced his employment with the respondent. For the first month of his employment he was paid his wages in cash and after that he was paid by cheque. He received payslips from three months after his start date and he did not receive a contract of employment. Counsel for the claimant stated that the respondent was in breach of Section 3 (1) of the Terms of Employment (Information) Act, 1994. The claimant did not receive any official documentation other than a P.45 after his employment ceased.

In cross-examination the claimant said that while there was a clocking system to record employees time-keeping this was not in operation for the first two to three months of his employment. While counsel for the respondent referred the claimant to a Revenue document stating that he commenced his employment on 14th March 2005 the claimant stated that he did not start on this date. While the clocking-in card also showed the claimant as being present at work on 18th March 2005 yet the claimant stated that there was no clocking-in system in operation when he commenced his employment and this was the case for at least a month after his start date. He claimed Unemployment Benefit when he was not working but he was not sure as to what date he ceased claiming this payment and started working with the respondent. A cheque stub dated 16th March 2005 was also shown to the Tribunal indicating that the claimant was paid by cheque for three days and this was the first week of his employment. Clocking cards for mid February 2005 were shown to the claimant to indicate that this system was in operation prior to the claimant joining the respondent. The claimant said that he did not receive letter dated 28th February 2006 terminating his employment. An incorrect P.45 was issued to the claimant initially and an amended version was issued on 1st March 2006.

In answer to questions from Tribunal members the claimant said that his friend had been working with the respondent and he told him that there was a job there for him in Cork. The claimant then moved from Limerick to commence his employment with the respondent in Cork and initially he lived with his friend. He did not receive payslips at the start as he was paid in cash but once he was paid by cheque he did receive payslips. He did not know what date he was paid by cheque.

Respondent's case:

The Tribunal heard evidence from the book-keeper who is self-employed and works from the respondent's office in Ballincollig. She was doing the book-keeping for the respondent when the claimant commenced his employment. There was a clocking-in system where each worker has a card for the week. One of her colleagues goes through the cards and sometimes employees do overtime in the evenings and on Saturdays. The clock does not put in the dates however when they are passed on to witness the dates have been inserted. Witness gets the cards on a Monday and the employees are paid at the end of the week. The claimant was paid on the 18th March 2005 and this clocking-in card was shown to the Tribunal. There was no system in place to pay by cash. If the claimant started in February 2005 there was a clocking-in system in place and there was no record of his having been working there at that time. Witness had the company cheque book, she controls the payroll and records the payments. If the claimant was employed on 28th February 2005 he should be on record at that time and the earliest record of payment is on 16th March 2005. His employment was terminated on 28th February 2006 and he was paid one week's pay in lieu of notice. She made an error when issuing the P.45 however an amended version was subsequently issued to the claimant. He was paid up to the 6th March 2006.

In cross-examination witness said that all the employees are paid by cheque or bank transfer. There were no transactions by cash that she was aware of. While the first payment to the claimant

was for week ending 18th March the actual payment was made on Wednesday 16th March as the following day was 17th which was a Public Holiday and on the 18th the company was closed. His week commenced on Monday 14th March. The staff are normally paid on a Friday. The claimant was paid by cheque for the first few pay days and he was then paid by transfer once his details were given to the respondent. It transpired that three P.45's were issued to the claimant, two of which had errors.

In answer to questions from Tribunal members witness said that the respondent had thirty-six employees at the period in question. No cash payments were ever made to employees and all employees are on the clocking system.

Counsel for the claimant accepted that the claimant was paid one weeks pay in lieu of notice and he was also paid in lieu of all outstanding holidays.

Determination:

The factual evidence in this case was such that the claimant commenced his employment with the respondent on 14th March 2005 and his employment ended on 6th March 2006, which included one week's notice. The claimant does not have one years service as required under Section 2 (1)(a) of the Unfair Dismissals Acts 1977 to 2001 therefore the Tribunal does not have jurisdiction to hear the case. No award is being made under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 or the Organisation of Working Time Act, 1997 as the claimant has been paid his entitlements under these Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

