

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee  
MN178/2006

WT98/2006

against

2 Employers

under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony B.L.

Members: Mr G. Phelan  
Ms H. Kelleher

heard this claim at Cork on 24th May 2007

Representation:

\_\_\_\_\_

Claimant :

In person

Respondent :

Mr Sean Casey, Managing Director

The decision of the Tribunal was as follows:-

#### **Claimant's case:**

The claimant worked for the respondent from 30<sup>th</sup> September 2004 to 20<sup>th</sup> September 2005.

The claimant worked the late shift on 19<sup>th</sup> September 2005. He came in to his place of work the next morning, 20<sup>th</sup> September 2005, because the manager had requested to meet him. He had not been told why the manager wished to meet him. When he met the manager she told him, "You're finished". The claimant understood this to mean that he was not to come back to work anymore. While he had earlier been rostered to work on 21<sup>st</sup> September he did not show for work because he understood that his employment with the respondent had been terminated as and from the morning

of 20<sup>th</sup> September. His sister-in-law, who also worked for the respondent, and with whom he shares accommodation, delivered the respondent's letter of dismissal to him. Although the letter was dated 22<sup>nd</sup> September he did not receive until 27<sup>th</sup> or 28<sup>th</sup> September. He denied receiving any warning about drinking. He pointed out to the Tribunal that the letter of warning, presented by the respondent in evidence, did not bear his signature. His work breaks lasted fifteen and thirty minutes respectively. He agreed that he had some words with his supervisor about the washing-up during his shift on 19<sup>th</sup> September. In cross-examination the claimant denied receiving the written warning dated 18<sup>th</sup> July 2005 or of being informed of any complaints about his drinking at work. He obtained alternative work one month after his dismissal at a higher rate of pay.

The claimant got three weeks holidays in August 2005 but was only paid for two of those weeks. He was given payment for a further week when his employment was terminated. He worked twelve to fourteen hours on public holidays but never got double pay for them.

### **Respondent's case:**

There was an altercation between the claimant and his supervisor during the night shift on 19<sup>th</sup> September because the claimant would not do the tasks assigned to him. He was given one week's notice on 20<sup>th</sup> September 2005 and was due to return to work on the Wednesday for his shift.

The manager received a telephone call from the claimant's supervisor on the night of 19<sup>th</sup> September 2005 complaining that the claimant had refused to do a task assigned to him, that they had nearly come to blows and that he could not work with the claimant anymore. The manager discussed this over the telephone with the managing director and it was decided to give the claimant a week's notice. The manager asked a colleague to let the claimant know she wished to meet him on the morning of 20<sup>th</sup> September 2005. At the meeting she told the claimant she was giving him one week's notice as it was not working out. She asked the claimant if he understood what that meant and he said he did and walked out.

The claimant was due to work on the Wednesday 21<sup>st</sup> September but he did not show for work. The manager tried ringing his mobile but it was turned off. She then rang his house and spoke to his sister-in-law who told her he was not there. A letter of dismissal dated 22<sup>nd</sup> September 2005 was given to his sister-in-law (who also worked for the respondent) to deliver to the claimant. The manager had wanted to dismiss the claimant for a long time as he was not doing his duties and she would rather lose the claimant than the supervisor. There had been several altercations between the claimant and his supervisor and as there was only a certain number of shifts it was not possible to have them on separate shifts. On the night of 19<sup>th</sup> September the claimant and his brother came back from the pub drunk. The supervisor did not have any reason to lie and has been working with the respondent four or five years. There were eleven to thirteen staff and the claimant was constantly causing problems.

The staff know of the policy and procedures that are in place and these cover drinking at work. These procedures are only provided in English. She went through the incidents with the supervisor: the claimant's drinking, being late and arguing with supervisors. The claimant's response was that he and the supervisor did not get on. Witness felt that the working relationship deteriorated when the supervisor was promoted. The respondent employs people of several nationalities.

The claimant was paid up to the night of the 19<sup>th</sup> September 2005. Payment in respect of thirty-five hours holidays due was included in his last pay cheque.

The claimant's supervisor was not present to give evidence to the Tribunal as to what occurred on the night of 19<sup>th</sup> September 2005.

**Determination:**

The Tribunal is satisfied on the balance of probability that the claimant understood the manager's words on 20<sup>th</sup> September 2005 to mean that he had been dismissed with immediate effect. Under the provisions of the Minimum Notice and Terms of Employment Acts an employee with over thirteen weeks' service with an employer is entitled to one week's notice or payment in lieu of notice unless he is dismissed for misconduct. As the Tribunal only heard hearsay evidence from the respondent as to what occurred on the night of 19<sup>th</sup> September 2005 the claimant failed to discharge the onus of showing that the dismissal was for misconduct and as the claimant did not obtain alternative employment in the week immediately following his dismissal the claim under the Minimum Notice and Terms of Employment Acts 1973 to 2001 succeeds and the Tribunal awards the claimant €298.35 in lieu of one week's pay, under the Minimum Notice and Terms of Employment Acts 1973 to 2001.

The Tribunal finds that the claimant is entitled to €298.35 under the Organisation of Working Time Act 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

