

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
Employee

CASE NO.
WT314/2006
MN649/2006

Against

Employer

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: Mr. P. Hurley

Members: Mr. M. Forde
Mr. J. McDonnell

heard this claim at Ennis on 1st August 2007

Representation:

Claimants:

Ms. Bridgette Meehan, B. Meehan, Solicitors, One Michael Street, Limerick

Respondent:

John Casey & Company, Solicitors, Bindon House, Bindon Street, Ennis, Co. Clare

The decision of the Tribunal was as follows:

Claimant's case

The claimant commenced employment with the respondent, who is his father, on 29th November 2004, after he left school. He was employed as an apprentice electrician.

No rate of pay was agreed at the outset and there was no written contract. The claimant was paid a standard wage of €218 per week. His working hours varied from week to week, depending on the nature of the work. The claimant was not paid for his first week, but worked a week-in-hand.

On 1st May 2006, which was a Bank Holiday Monday, the claimant was ill and telephoned the respondent to notify him that he would not be able to work the following day. He was ill and absent from work on the 2nd and 3rd May. On 4th May 2006 he returned to work. There was no agreement that he would be paid for sick days and he had never been ill before this. On 4th May 2006, when he returned to

work, the respondent told him, 'If you ever pull a stunt like this again you're sacked'. They argued and the respondent thumped the claimant on the side of the head. The claimant left, made a complaint to the guards, and never returned to work.

During the period of his employment the claimant took holidays at Christmas 2004 and Christmas 2005 and two days on 3rd June 2005 and 7th June 2005. In 2006 he took no holidays.

Respondent's case

The respondent employed the claimant in November 2004 after the claimant made contact with him following a separation of six years. Initially the work relationship was 'brilliant'. The respondent was delighted with the claimant's attitude to work, to the respondent and to clients. From October 2005 to February 2006 the claimant trained full-time with, and was paid by, FÁS. Following this period the claimant's attitude towards the respondent changed. At 11pm on 1st

May 2006 the claimant phoned the respondent and said he was sick and would not be at work the following day. The respondent told him to phone again tomorrow.

When the claimant had not phoned by 9pm the following day, the respondent phoned him. The claimant said he would not be in for a few days. On Thursday 4th May 2006 the claimant arrived at work. The respondent told the claimant that he should have some respect for him as his employer and tell him when he was coming in. The claimant 'lost it' and started to curse and swear. He started to leave and the respondent tried to stop him. The respondent had been able to calm the claimant down when he had become agitated in the past. The respondent denied that he assaulted the claimant. The claimant left and never made contact again. The respondent later asked a mutual friend to try to persuade the claimant to come back but this was not successful.

The respondent paid the claimant's wages by standing order into his bank account. The claimant was paid the same wage no matter how much work he had done. When the respondent was on holidays he paid the claimant although he couldn't work on his own. Occasionally, he arranged for another electrical contractor to give him work and on these occasions the claimant was double paid, both by the respondent and by the other employer. When the claimant went to train with FÁS, the respondent paid him for the first week's training. This was in lieu of the week-in-hand he had worked at the start of his employment. After the claimant left the job, the respondent paid him for the following week, hoping that he would come back. The claimant was not dismissed from his job, he walked out. The respondent said he was prepared to pay the claimant for his holidays and sick leave, the claimant could have just asked him.

The claimant was paid for the following holidays:

9th and 10th December 2004
13th and 14th December 2004
20th and 21st January 2005
14th to 18th March 2005
6th to 10th June 2005
22nd to 24th June 2005

1st July 2005
28th and 29th July 2005
1st to 5th August 2005
8th and 9th August 2005
24th to 26th August 2005
20th to 23rd September 2005
26th September 2005

These were occasions when the respondent went on holidays and paid the claimant although he was not working.

Determination

The Tribunal finds that no dismissal took place and, therefore, the claim under the Minimum Notice And Terms Of Employment Acts, 1973 to 2001 fails.

The Tribunal awards claimant €654.00, being the sum of three weeks pay, under the Organisation Of Working Time Act, 1997

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

