

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD764/2006
MN507/2006

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. D. Hegarty
Ms. P. Doyle

heard these claims in Cork on 28 August 2007

Representation:

Claimant(s) :

Mr. Brendan Kelly BL instructed by
Thomas Coughlan & Co., Solicitors,
Park House, 3 Tuckey Street, Cork

Respondent(s) :

Ms. Gillian Keating, J.W. O'Donovan, Solicitors,
53 South Mall, Cork

The determination of the Tribunal was as follows:-

Claimant's Case

Giving evidence, the claimant said that his employment commenced in August 2003. He was initially a part-time doorman. He worked fifteen to twenty hours per week. It varied. In January 2004 he got administrative duties as well as door duties. He was then "effectively full-time".

In November 2005 the claimant went to part-time. He worked a half-week on average i.e. 2.5 days at €90.00 per day. His average weekly pay was €225.00. This was not a gross figure. He had no contract and he got no payslip.

The claimant worked in Cork until April 2006 when he moved to Cahir where he worked from home. The respondent installed software on the claimant's computer so that he could log on. He had to go to Cork one day per week to collect documents. The software did not work properly. He had to go to Cork regularly.

Asked about Tuesday 11 April 2006, the claimant said that, after trying to connect to the server in Cork, he rang his general manager who told him to ring the engineer. It transpired that the claimant might have to go to Cork which would be a three-hour round trip. The claimant got an e-mail from the respondent's financial controller (hereafter referred to as the FC) dismissing him. The claimant rang the respondent's office premises to speak to either of the managers. Neither was available. He kept trying to ring them. He got the general manager on Saturday morning. The claimant told him that his work with the respondent was his only income, that he still had the respondent's laptop computer and that he was owed wages. He was told that he had been made redundant. He had set up an administrative system for the respondent. He had been a good, loyal employee who had been very flexible and who had received no warnings.

Asked if the respondent had sought any other work for him, the claimant said that the respondent had not done so and that the respondent would not even take his calls. The FC and the claimant had had personality problems. There had been arguments in the office. They were asked to keep their arguments outside the office. The FC was very condescending. He was very rude and blunt to the claimant. They had got off to a bad start. There had been an immediate personality clash. The claimant believed that the FC thought that the claimant was at his beck and call. The claimant had always felt that the FC would bring someone in to replace him.

Asked when the FC had started with the respondent, the claimant said that the FC had been there in April 2005.

The claimant told the Tribunal that he had had a lot of respect among the employees but that he was only about two weeks in Cahir before his dismissal. It had been agreed with the respondent that he could work from Cahir if software was installed.

Giving evidence as to his efforts to mitigate his loss, the claimant said that he had registered with agencies, sought jobs advertised in newspapers and looked on-line. He was trying to build up a business as a sole trader. He had a lot of industry contacts from his time with the respondent. It was mid-November 2006 before his business became "fruitful" but it was "going fine" at the time of the Tribunal hearing.

The claimant told the Tribunal that the last day for which he had been paid by the respondent was Tuesday 4 April 2006. He still had the laptop that he had used to work for the respondent but the respondent owed him money.

Respondent's Case

The respondent's representative furnished the Tribunal with a document dated 28 August 2007 confirming that her firm acted for the liquidator in respect of the liquidation of the respondent company. In the document the respondent's representative stated that her firm had been advised by the liquidator that he was aware of the Employment Appeals Tribunal hearing. The Tribunal was asked to note that the respondent was insolvent and had no funds to meet the claims made by the claimant. In the circumstances of the respondent's insolvency it was not proposed to expend further

monies defending the claimant's claims.

The respondent's representative wrote that her firm would have notified the Tribunal of the position had her firm been instructed to do so by the liquidator but that the liquidator had mistakenly thought that the respondent's original solicitors had advised the Tribunal of the position. No disrespect to the Tribunal had been intended.

Determination:

On the uncontested evidence of the claimant, the Tribunal allows the claim under the Unfair Dismissals Acts, 1977 to 2001. Having considered the claimant's evidence as to loss incurred and his efforts to mitigate that loss, the Tribunal deems it just and equitable to award him compensation of €2,500.00 (this amount being equivalent to 11.11 weeks' gross pay at €225.00 per week) under the said legislation.

In addition, the Tribunal awards the claimant the sum of €450.00 (this amount being equivalent to two weeks' gross pay at €225.00 per week) as a result of finding that his claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, succeeds.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)