

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

against

4 Employers

under

CASE NO.

MN151/06

WT84/06

UD266/06

**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 G. Phelan
Mr J. McDonnell

heard this claim at Cork on 17th May 2007 and 12th July 2007.

Representation:

Claimant : Mr. Eddie Burke, Edmund J. Burke & Co., Solicitors, 2 Courthouse
Street, Cork

Respondent : Mr. David O'Meara, David J. O'Meara & Sons, Solicitors,
Bank Place, Mallow, Co. Cork.

The determination of the Tribunal was as follows:-

Respondent's case:

The book-keeper who is a sister of the respondent gave evidence to the Tribunal. The claimant was employed by the second named respondent from June 2004 to June 2005 at which time the carpentry business slowed down. The plant hire side of the business was getting busy at this time and the claimant was taken on to work on the load all in Mallow in June 2005. Another employee who worked on the lorry became ill as a result of an accident and having spoken with the claimant he transferred to this area of work in September 2005. As a result of a review by a Labour

Inspector in 2006 it transpired that because of an increase in JLC rates that an amount of money was due to the claimant and this was subsequently paid to him via the Inspector in question.

Witness said that all the employees were aware that there were two companies. The claimant was issued with a P.45 in June 2005. He was paid one weeks holiday pay in October 2005 and was paid two weeks notice on 16th December 2005. He ceased working on 9th December 2005. The previous cheques were issued from the first named respondent and the P.45 was issued from the second named respondent. All wages due to the claimant have been paid. When the claimant worked on the load all he was based in Mallow and was not entitled to be paid expenses however he used to take the lorry home following deliveries. However when expenses were payable they were put through his wages as an allowance as they were non-taxable. During the claimant's period of employment with the second named respondent from June 2004 to June 2005 there were no difficulties with him. The respondent did not want to let him go however there was no choice but to transfer him to the first named respondent.

In cross-examination witness agreed that the claimant commenced his employment with the respondent on 24th May 2004. Her brother issued the cheques. While witness said that the claimant worked as teleporter from June 2005 she was unable to give evidence of the type of work he was doing in 2004. Her brother was ill and unable to be present at the hearing of this case. While she printed payslips for the claimant she then gave them to her brother and as far as she was aware they were not passed on to the claimant. The two companies are two separate legal entities and have separate employer numbers. She did not have documentation at the hearing to verify the claimant's rate of pay but said that he worked some Saturdays. While a P.45 was issued to the Revenue Commissioners at the time he transferred from one company to the other however there was no accompanying letter. A copy of this P.45 was not available during the hearing. As far as she was aware the P.45 which was issued on the Friday by her brother and it was then taken back from the claimant (and given to witness). Her brother was a director of both companies. She did not have a record of the hours worked by the claimant. Her brother computed the hours and he also wrote the cheques. She also does book-keeping services for other clients. She was not in a position to say whether other employees were taken on after the claimant was let go. While there was one non-Irish employee with shorter service than that of the claimant and he was not let go possibly because he was able to drive an artic lorry.

In answer to questions from Tribunal members regarding the P.45 witness said that the Revenue Commissioners could verify that they received it. Both companies are still in existence. At the termination of his employment the claimant was paid one weeks wages plus one weeks holiday pay. In relation to the termination of the claimant's employment witness said that as far as she was aware the lorry was off the road during January and February 2006.

Claimant's case:

The claimant gave his evidence through an interpreter.

The claimant commenced his employment with the respondent on 24th May 2004 through contact with a Polish friend who also worked with the respondent. He was to be paid a basic weekly wage of €400 which was €10 per hour. After three months he started driving the teleporter and he did carpentry jobs some Saturdays. From May to December 2004 he was paid cheque but not every week. There were times when he had to wait two/three weeks to be paid his wages. He was not told he was being moved from one company to the other. He started driving the

teleporter and he felt this was a better job. He was still working for MK the director of both companies and he was getting the same wages. In June 2005 he travelled to London with the respondent to collect a new truck. They left on a Friday at approximately 6/7pm and returned Saturday at 9pm and the claimant had driven through the night to catch the ferry.

In relation to holidays the claimant took two weeks in January 2005 and returned to Poland. He received holiday pay following his return to work after his trip to Poland. He did not receive any holidays in 2004 other than being paid for the Public Holidays at Christmas. He did not know anything about his transfer to the new company and he got two further weeks holidays in June 2005 just one week after the transfer. All he knew was that MK was his employer. His wages increased in August 2005. In September 2005 he started as a lorry driver and was paid €450 per week plus €80 for Saturday. He worked every Saturday apart from four. He was paid by cheque which were made out to him personally and he cashed them at a bank in Mallow.

The last day he worked for the respondent was 16th December 2005 and two days later on 18th December he went to Poland on holiday. He was not told on the 16th that his employment had been terminated and got no notice of such termination. He did not receive a P.45 or P.60 or payslips. During the course of a telephone call in January 2006 he was told by the respondent that there was not more work for him. The claimant is a qualified carpenter, lorry and teleporter driver, mechanic and arctic driver and he worked in all of those areas for the respondent. After his employment was terminated new employees started working for the respondent. There were never any complaints about his work. Four weeks prior to his going on holidays at Christmas 2005 he was not made aware of any problem about taking the holidays at that time and he was not told there would not be work for him on his return. After he was let go his colleagues are still working for the respondent and there are still overtime hours available.

In cross-examination the claimant said that he did not take two weeks holidays at Christmas 2004. He did not take two weeks holidays in July 2005. The respondent did not give him a P.45. If he needed a Saturday off he asked the respondent. On the Saturday there were two teleporters, drivers and carpenters on site. In relation to the trip to the UK with the respondent to collect a lorry he was promised payment of €200 plus the Saturday money.

In answer to questions from Tribunal members witness said that his friend still works for the respondent. He obtained alternative work two weeks later. During his time with the respondent he was paid for four weeks holidays. As far as he was aware he was paid one weeks wages on termination of his employment. MK told him it was not a busy time and he did not have work for him. He did not see the respondent during the week and often he would only see once every two weeks.

Determination:

There was no evidence before the Tribunal to show that the claimant was fairly dismissed. The claimant gave evidence and there was nothing to dispute it except for hearsay evidence from the book-keeper. The claimant did not have a contract of employment and did not receive payslips. The Tribunal award the claimant the sum of €2,120.00 which is the equivalent of four weeks wages under the Unfair Dismissals Act 1977 as amended by Section 6 (a)(c)(ii) of the Unfair Dismissals (Amendment) Act, 1993. The claimant is also awarded the sum of €530 which is the equivalent of one weeks wages under the Organisation of Working Time Act 1997. No award is being made under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

