

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

Employee

CASE NO.

MN808/2006

UD1221/2006

Against

Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly

Members: Mr. R. Murphy
Mr. O. Nulty

heard this claim at Dundalk on 20th November 2007

Representation:

Claimant: Mr. Daniel Coyle BL, instructed by Joseph Traynor of Traynor Mallon & Co. Solicitors,
86 Clanbrassil Street, Dundalk, Co. Louth.

Respondent: Mr. Francis Bellew solicitor of Ahern & McDonnell, Solicitors, Roden Place, Dundalk,
Co. Louth.

The determination of the Tribunal was as follows:-

The representative for the respondent made an application to have the case adjourned because his witness was not available. The letters giving notification of the hearing issued on 23rd October 2007. Due to an administrative error the letter was overlooked in the representative's office. The witness was on holiday in the USA, the trip had been arranged for some time. The witness knew about the hearing before he left. No T2 had been filed on behalf of the respondent.

The Tribunal decided not to grant a postponement. An application for a postponement on the date of a hearing is almost invariably refused. Despite receiving notice of the hearing, the representative for the respondent did not apply to a division of the Tribunal for a postponement. The claimant was present with his representatives and ready to make his case. The claimant would be gravely prejudiced if a postponement was granted.

Claimant's Case:

As no T2 had been filed, the claimant's case was an undefended action.

The claimant gave evidence. He started work at the driving range in February 03. About a year later the respondent company took over. He was the PGA professional and he ran the shop and gave golf lessons. Initially he worked Monday to Sunday, later he got Sundays off. He worked 70 to 80 hours a week.

On 11 October 2006, he was driving to Donabate to collect fertilizer for the range when the boss phoned him. He drove back to the range. Shortly afterwards the boss drove up and handed him a letter. The claimant said to him; 'Is that it, are you getting rid of me?' The boss said; 'Yes'. The claimant made efforts to mitigate his loss.

The claimant had no contract of employment. The respondent did not have a grievance procedure that the claimant was aware of. The claimant received no payslips or P.60s.

Determination

The Tribunal considered the uncontested evidence of the claimant. The claimant was dismissed without use of fair procedure. He was not notified in advance of the dismissal meeting. He had no opportunity to bring a representative to the meeting. Therefore the dismissal was unfair.

As a result of his dismissal the claimant lost his PGA ranking. He also lost his part-time job with Louth VEC.

An award of €23,800.00 is made under the Unfair Dismissals Acts, 1977 to 2001.

An award of €1,200.00 is made under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

No award is made under the Organisation of Working Time Act, 1997 although the claimant said he was owed holiday pay because no claim was made on his T1A claim form. The Tribunal could not amend the form on the day of the Hearing without putting the respondent on notice.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)