

## **EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

Employee

against

Employer

under

CASE NO. UD975/2007

RP539/2007

MN757/2007

WT324/2007

**UNFAIR DISMISSALS ACTS, 1977 TO 2001  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003  
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. D. Mac Carthy S C

Members: Mr. D. Winston  
Mr. A. Butler

heard this claim at Dublin on 24th January 2008

Representation:

Claimant: Mr David B Doyle, Doyle Associates, Solicitors,  
Orchard House, Main Street, Rathfarnham, Dublin 14

Respondent: Mr Gerry McGreevy, Brady McGreevy Solicitors,  
35 Upper Fitzwilliam Street, Dublin 2

### **The determination of the Tribunal was as follows:-**

The claimant was employed by the respondent from 1<sup>st</sup> December 2001 as a bench engineer. There was no contract of employment. Gross weekly pay, including overtime, was agreed as €804.23 per week. The job involved repairing machines at the company premises and site visits to install, service and repair equipment video and CCTV equipment.

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

The claimant returned to work after four week's certified sick leave on 16<sup>th</sup> July 2007, upon his managing director's (MD) arrival he went to speak to him. He had an hour long meeting with his MD who outlined four options to him, namely: 'that things must change', dismissal, redundancy, 'do something else'. Of the options outlined dismissal and redundancy were discussed in most detail. The claimant had had a previous meeting with his MD in June 2007 about his role within the organisation and what his future intentions were, in light of him due to complete a course of study, which the respondent had paid in part for. The claimant was unwilling to discuss his future intentions, as his employer had ceased paying his course fees and the claimant had paid the final year's fees himself. The claimant wished to continue repairing machines at the company premises and was unwilling to spend more time offsite repairing

machines, as that was not what he was originally hired to do. There were periods of time, during the course of his employment, when he was requested to go into Dublin city centre to service machines but this did not suit the claimant. His MD told him to go home and think about the situation and that he would contact the claimant the following day about the job. Later that day the claimant received a text message from his MD with the words 'two weeks per year plus one week'. The claimant did not hear from the respondent as expected and understood that his notice was given on the 16<sup>th</sup> July 2007. He continued to be paid for the following two weeks.

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

The respondent had sought a meeting with the claimant in June 2007 concerning the high breakdown rate of the DVR machines. Increasingly, clients were requesting that the machines were fixed onsite, rather than being taken away for repair. The respondent was seeking the claimant to engage in more offsite maintenance, as the profile of the job needed to change. The respondent had employed another member of staff to work offsite, but due to the high breakdown rate of the machines and customers requests for equipment to be repaired on site, it was no longer feasible to employ a full-time bench engineer. This was one of the reasons for seeking a meeting with the claimant in June, he also wished to know the claimant's intentions after he finished his course of study. The respondent explained that he had ceased paying for training courses as he was no longer receiving reimbursement from FÁS, the National Training and Employment Authority, this applied to all staff. At the meeting on the 16<sup>th</sup> July 2007 the problems with the DVR machines and the need for them to be fixed offsite was again discussed. The claimant did not wish to spend more time offsite and so the respondent proposed various scenarios to the respondent as described above. He told the respondent to go home on paid leave and think about what he wanted to do. He sent a text message that evening to the claimant outlining a possible redundancy payment. There was a breakdown in communications after this point.

### **Determination:**

The Tribunal is satisfied that the requirements of the claimant's job had changed and redundancy within the meaning of Section 7(2)(b) of the Redundancy Payments Act 1967 to 2003 applied. Accordingly the Tribunal finds that the claimant is entitled to a redundancy payment based on the following criteria:

Date of Birth: 23 February 1964  
Date of Commencement: 1<sup>st</sup> December 2001  
Date of Termination: 30<sup>th</sup> July 2007  
Gross Weekly Pay: €804.23

Redundancy is a substantial ground under Section 6 of the Unfair Dismissals Act 1977. The claim under the Unfair Dismissals Acts 1977 to 2001 fails, as do the claims made under the Organisation of Working Time Act, 1997 and the Minimum Notice and Terms of Employment Act 1973.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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