

## EMPLOYMENT APPEALS TRIBUNAL

Claims Of:  
Employee

Case No.  
UD1365/2006  
MN905/2006  
WT421/2006

against

Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001  
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. D. Hegarty  
Mr. J. McDonnell

heard this claim at Cork on 23rd October 2007

### **Representation:**

Claimant: Ms. Lucy Walsh B.L. instructed by Ms. Sheila Stokes, Solicitor,  
Brompton House, Old Waterpark, Carragline, Co. Cork

Respondent: Ms. Deirdre Foley, Foley McNally Goldberg, Solicitors,  
42 Popes Quay, Cork

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

The Tribunal heard dismissal was in dispute between the parties.

#### Respondent's Case:

Giving evidence the respondent told the Tribunal that the claimant commenced employment in March 2003 but the claimant was not listed as an employee of the respondent's until March 2004. The claimant requested to be paid by cash for the first year of his employment.

The respondent stated that by agreement his employees finish work at 5pm. On a couple of occasions the claimant finished work early and left the site in or around 4pm.

Approximately eight weeks prior to the 20 June 2006 the claimant sustained an injury at work. The

respondent paid the claimant money while he was absent. The claimant asked for full wages for this period of time but the respondent could not pay him in full. The respondent confirmed that he received a text message on the 9 June 2006 from the claimant about his wages.

During cross-examination it was put to the respondent that the claimant was excluded from the site. The respondent said the claimant had never been prevented access and that he was insured to be on the site.

It was put to the respondent that the claimant had sought details of a pension scheme. The respondent stated that the claimant did not want to be part of the pension scheme. The claimant's P-45 was dated 16 June 2006.

The respondent accepted that the claimant had been paid cash in addition to his wages. It was put to the respondent that the claimant wanted to be a legitimate employee. The respondent stated that the claimant had specifically requested to be paid in cash.

Answering questions from the Tribunal the respondent stated that "up to a point" he was aware of regulations concerning pension and sick pay in the construction industry. The respondent was unaware at the time of June 2006 that he had to make pension provisions for employees.

Giving evidence Employee A told the Tribunal that he was working with another employee (Employee B) and the claimant on a site on Tuesday, 13 June 2006. Employee A was not speaking to the claimant because of an argument the claimant had with the respondent about his wages.

On the 13 June 2006 the claimant started to climb a ladder to the second storey where Employee A and B were working. Employee A told the claimant not to climb the ladder, as he was afraid the claimant would fall. Employee A told the claimant to return to ground level and wait until the respondent returned to the site. Employee A stated that the claimant was not locked out of the site but he left the site after this conversation.

During cross-examination it was put to Employee A that the claimant was still working on the site on the 21 June 2006 and that his tools had been taken from him. Employee A said the claimant was not working on the site on the 21 June 2006 and his tools had not been taken from him. The site's entrance was not blocked by a vehicle.

Giving evidence Employee B confirmed he was working with the claimant and Employee A on the 13 June 2006. Employee B heard Employee A tell the claimant to return to ground level until the respondent returned to the site. Employee B was aware of an argument that had occurred between the claimant and the respondent on the previous Saturday. During cross-examination Employee B said that the claimant's tools were not taken from him.

### **Claimant's Case:**

Giving evidence the claimant stated that when he commenced employment in March 2003 he did not request to be paid in cash. The respondent made the decision about the method of payment. In the first year the claimant earned €400.00 in cash per week. The claimant asked the respondent to "put him on the books" as he wanted to be a legitimate employee. From 2004 the claimant received cash and a cheque as his wages.

During the course of his employment the claimant enquired from the respondent about payslips and

a pension scheme. The claimant went to SIPTU in early June 2006 for advice, as the respondent was not responding to his queries about payslips and a pension scheme. When the claimant sustained an injury at work he did not receive any sick pay money from the respondent.

The claimant did not threaten the respondent but he did send the respondent a text message, as the respondent was late paying his wages. When the claimant received his pay cheque for week ending 16 June 2006 it was for a different amount than usual. The respondent told him it was because he had made the deductions the claimant requested.

The claimant stated that it was on Monday, 19 June 2006 that the tools were taken from him. The claimant started moving blocks instead. On Tuesday, 20 June 2006 he was told to get down off the ladder and leave the site, as he was no longer insured. The claimant returned to ground level and continued to move blocks. The respondent was present on the site on this date. There was tension on site and the claimant thought this might have been because a SIPTU representative had visited the site on his behalf. When the claimant returned from lunch the entrance to the site had been blocked off by the respondent's vehicle. The claimant managed to gain access by the back of the site. On Wednesday, 21 June 2006 Employee A and B ignored the claimant but he was told to leave the site. The claimant left the site and he did not feel he could return to his job.

The claimant did not finish work early on a couple of occasions. The claimant received three weeks holidays during the year.

The claimant established his loss.

During cross-examination it was put to the claimant that the text message he sent was threatening. The claimant stated that when he sent the text message he was sick and tired of "chasing" his wages. The claimant stated there might have been an argument between him and the respondent but he had not threatened the respondent.

It was put to the claimant that the respondent paid him money during the time he was injured. The claimant said he had not received money from the respondent but he received Social Welfare payments.

Answering questions from the Tribunal the claimant said he did not know whether or not tax was deducted from his wages. The claimant stated that quite possibly he had sent other texts to the respondent similar to the text message of the 9 June 2006.

Giving evidence a witness for the claimant confirmed that the claimant had received cash only for the first year of his employment and a cheque and cash for the subsequent years. The witness recalled that on one occasion the claimant had waited two weeks to receive his wages.

Giving evidence an Assistant Branch Organiser with SIPTU stated that in early June 2006 he had contact with the claimant. The claimant told him that he had difficulty with his employer and that there had been an argument.

The claimant told him that he had not received payslips and he also enquired about his employment rights. The witness told the claimant that under a Registered Employment Agreement he should be on a certain rate of pay and be part of a sick pay scheme and a pension scheme. The witness made contact with the respondent and they arranged a meeting on site. The parties reached an agreement after the claimant's employment ended but this agreement was not successful.

**Determination:**

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal finds that a dismissal did occur in relation to the claimant's employment and that the dismissal was unfair. The Tribunal also finds that the claimant contributed to this dismissal. The Tribunal awards the claimant €6,500.00 under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal having found that a dismissal occurred in relation to the claimant's employment, award the claimant €1,100.00 being the equivalent of two weeks' wages under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

The Tribunal awards the claimant €1,650.00 being the equivalent of fifteen days holiday pay under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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