

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM(S) OF:**

Employee

**CASE NO.**

RP584/2006

UD1133/2006

MN747/2006

WT351/2006

against  
Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001  
ORGANISATION OF WORKING TIME ACT, 1997  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003  
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr M. Murphy  
Mr J. Moore

heard this claim at Cavan on 30th January 2008

**Representation:**

Claimant(s) : Mr. Declan Ferry, SIPTU, Ashe Street, Cavan

Respondent(s) : Mr. Breffni O'Neill, Construction Industry Federation, Canal Road, Dublin 6

The determination of the Tribunal was as follows:-

At the outset the claim under the Redundancy Payments Acts, 1967 to 2003 was withdrawn.

**Claimant's Case:**

The claimant gave evidence. He stated that he had been employed by the respondent for over seven years. He commenced employment as a general operative and was promoted to the position of teleporter driver.

During his employment he had worked on sites in Dublin (for the first two and a half years of his employment) Leitrim, Monaghan, Cavan and various other sites. While working in Dublin, in the past, he was given petrol money when using his own car or had been given the use of a van.

In late September, early October 2006 he was informed by a person in Human Resources (hereafter known as HR) that he was to be moved to a site in Dublin. He asked how he was supposed to travel to Dublin and the reply given was to ask had he not got a car. The claimant told the Tribunal that his wife

was unwell at the time and had to attend Cavan hospital three times a week. He spoke to one of the Managers (known as E) and suggested he would go to Longford, Clones or Virginia but he was informed that it could not be done.

When asked by the Tribunal the claimant stated that that he did not have a contract of employment. When asked, he stated that when he worked in Dublin he was paid an hourly rate plus a half flat rate. The claimant told the Tribunal that he received a letter to be in Dublin on October 19<sup>th</sup> 2006. He went to his union about the letter as it stated that there was no other work for him. His union approached the respondent but no expenses were offered.

The claimant gave evidence of loss.

### **Respondent's Case:**

The Human Resources Manager gave evidence. He explained that the claimant had been employed as a teleporter operator. He had no disciplinary problems with the claimant in the past. He agreed that the claimant had worked in various locations around the country. The claimant was notified by letter on October 13<sup>th</sup> 2006 that due to a lack of work in Cavan, he was to be re-located to a site in Dublin. He told the Tribunal that he had told the claimant previously of the impending re-location but as, he felt, the claimant's tone had been aggressive, he felt the instruction should be put in writing.

On cross-examination the witness stated that the claimant had been a very good employee. When asked he said that he had tried to keep the claimant in the Cavan area but that there had been no work available. When asked, he said that the respondent did not make travel arrangements for their staff. However, in the past, if there were a large number of staff working on the same site, transport was provided. When asked why he had not taken up the claimant's proposal of alternative locations, he replied that the respondent could not just create jobs. He stated that it was clear that there was a position for the claimant but that he, the claimant, had decided that there was no longer a position for him.

When asked by the Tribunal the witness stated that there were already a teleporter employed in Virginia and there was no requirement for one in Longford. When asked, he stated that the claimant had left the employment of the respondent before he was issued with a contract of employment.

### **Determination:**

Having heard all the evidence adduced the Tribunal determines that the dismissal of the claimant was unfair. Accordingly, the Tribunal awards the sum of € 3,590.64, this being four weeks gross pay, under the Unfair Dismissals Acts, 1977 to 2001.

No evidence was adduced in respect of the Organisation of Working Time Act, 1997 and therefore the claim fails. The claimant failed to submit sufficient evidence in order to mitigate his loss and therefore the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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