

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

MN200/2006

UD352/2006

WT106/2006

against

Employer

under

### 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: Ms M. McAveety

Members: Mr. D. Morrison  
Mr J. Le Cumbre

heard this claim at Carrick-On-Shannon on 2nd November 2007  
and 7th January 2008

Representation:

Claimant(s) Mr. James Faughnan, Cathal L. Flynn & Co., Solicitors, St.  
Georges Terrace, Carrick-On-Shannon, Co. Leitrim

Respondent(s): Peter Collins, Collins, Solicitors, Breifne House, Main  
Street, Carrick-On-Shannon, Co Leitrim

The determination of the Tribunal was as follows:-

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

DC for the respondent told the Tribunal that he and his wife moved to Ireland eleven to twelve years ago. At this time the respondent was a charitable organisation. It was a company in its own right and FAS would help with the funding. It became a company limited by guarantee and it had no shareholders or share capital. The company was funded by a social economy scheme provided it registered as a limited company and prospective employees had to be unemployed long term. The claimant commenced employment on 12 May 2003 with Leitrim Animal Welfare. The respondent received a cheque every month from FAS. Each employee had to sign a FAS document and a

signed monthly report was sent to FAS

The claimant had difficulty in taking instructions from DC's wife. The claimant was involved in an altercation and DC reprimanded the claimant. The claimant told him that he could not reprimand him as he worked for FAS. DC requested the co-ordinator to explain to the claimant that FAS funded Leitrim Animal Welfare Centre. The claimant took two weeks unpaid sick leave at Christmas, and on his return to work he was a different person. He challenged DC and his wife. The respondent had five employees employed under the social economy scheme and Leitrim Animal Welfare Centre funded the remaining five. The claimant's duties including cleaning and washing kennels and the rule was not to hose down the kennels when the dogs were inside. The claimant forgot to lock the gates and he was given a first verbal warning on 12 January 2006. Some days later on 18 January the situation had not improved and the claimant was told to improve his performance. On 23 January 2006 the claimant cleaned out a kennel while a dog was inside. At this stage he had given the claimant two verbal warnings. He typed a written warning at 9a.m., which he gave to the claimant. That afternoon the claimant again hosed a kennel while a dog was inside. He felt the claimant was trying to wind him up, the claimant spat at him and called him names. The reason he dismissed the claimant was that he felt that the claimant was trying to engage him in compensation culture and DC felt that this would come against him and he did not rise to the occasion.

In cross-examination asked if he had a discussion with the claimant on 12 and 18 January 2006 he replied they did. The claimant believed he was working with FAS but there was no FAS documentation. The claimant was employed by Leitrim Animal Welfare Centre. He gave the claimant verbal warnings on 12 and 18 January in the yard, which was a three-acre site. A couple of times when the claimant walked the dogs he dropped the leads. The claimant's tasks were very basic. From day one he established what employees capabilities were. DC was chairman of Leitrim Animal Welfare Centre and he dismissed the claimant for gross misconduct. There was no witness to the incident. He telephoned the Gardai after the claimant spat at him and he did not know what the gardai did.

In answer to questions from the Tribunal he stated that the company was limited by guarantee. He was a director and his wife could not become a director and no one could benefit from the company. DC's wife gave the claimant his instructions and he was often confrontational with her. DC then took over as chairman and the claimant was answerable to him. Two signatories signed the cheques, which the claimant received, and he was not sure who they were. Asked if he had an account opened with Leitrim Welfare Trust he replied that when the social economy became involved it had to have its own charity number. He did not know if CC was a director of Leitrim Animal Welfare Social Economy. Asked if it was a coincidence that the change took place the week that the claimant was dismissed he responded the claimant was dismissed after two weeks sick leave. Asked if the claimant continued in employment would he be paid by the Pobal account he replied that CC dealt with this. Asked who could the claimant appeal the decision to dismiss to he replied he believed it was the development officer of the Social Economy Scheme.

### **Claimant's Case**

The claimant told the Tribunal that he commenced employment with the respondent on 11 May 2003, his job was to clean the kennels and he walked the dogs, he undertook light duties as he had a weak back. He did not have any issues with his employment until the past two to three months. He never received a verbal warning. On 23 January DC told him at 3.45 that he was getting rid of him at the weekend, as he did not clean out the kennels. DC took a dog out when he was cleaning

the kennels. The appellant did not spit at DC and he was never in trouble and never assaulted anyone in his life. DC told the appellant that he was slacking off in the last few months and that he was trying to look busy. DC called him names and DC accused the claimant of spitting at him and he told him to get out as fast as he could. He was not given a contract of employment. He had to clean forty kennels twice a day. During the last two to three months of his employment he suffered harassment at work and DC accused him of leaving the gates open and letting the dogs out. DC gave him his instructions.

In early October 2007 he commenced on a back to work scheme for which he earns €220 per week. From 23 January 2006 to October 2007 he was in receipt of unemployment benefit of €185.00 per week. He did not retain all his holiday pay records. DC hired and fired staff.

In cross-examination asked that DC accused him of leaving gates open he replied that DC wanted him to leave his job. The claimant had difficulty in lifting. He agreed that if the funding ceased the job ceased. He was not aware that there was a changeover from FAS to Pobal and that there was a difficulty with funding. DC called him names and he in turn called DC names and he did not spit at DC. DC told the claimant that he was dismissed and he left. Asked if he sought employment in security he replied he never thought of that. Asked if he was in receipt of social welfare or disability benefit he replied he was just unemployed and he was available for work.

MH former secretary/administrator told the Tribunal she had seen a copy of the diary in which there were numerous entries and she would have to see the entries to establish if it were DC's writing

### **Determination**

Having heard the evidence in the case the Tribunal are of the unanimous view that the claimant was unfairly dismissed. The Tribunal awards the claimant compensation of €13,400 under the Unfair Dismissals Acts, 1977 to 2001. The claimant is entitled to two weeks minimum notice in the amount of €596.70 under the Minimum Notice and Terms of Employment Acts, 1973 to 2001. No evidence was furnished regarding holiday pay and no award is being made under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

