

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

, MN649/2007
UD816/2007
WT279/2007

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: Mr. J. Sheedy

Members: Mr M. Forde
Mr. D. McEvoy

heard this claim at Cork on 22nd May 2008

Representation:

Claimant: Mr. David Gaffney of Coakley Moloney Solicitors, 49 South Mall, Cork

Respondent: Mr. Roger Morley, of W. St. Clair Rice & Co. Solicitors, Midleton, Co. Cork

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant gave evidence. He had worked since he was 13 years old in the construction industry. He worked as a teleporter driver for the respondent. He worked 8.00am to 5.00pm and every second Saturday. He had no problems with his employer.

On the day his employment ended he brought a teleporter to a city location and was working there with 2 others. His employer came and asked him to work some Sundays. The claimant would not work Sundays. His employer told him to finish what he was doing and look for another job. When that job was done, he parked his machine and walked away. The site manager asked him to stay but he did not.

His mobile phone rang twice later that day. It was his employer, but he did not answer the phone because he was upset.

He had arranged it himself with his employer that he work every second Saturday. He worked the Saturdays agreed when there was work to do. On a few occasions he was not available to work on Saturday.

Respondent's Case

The respondent gave evidence. The hours worked were 8.30am to 4.30pm from Monday to Friday. Finishing time was 3.30pm on Friday. The claimant was paid €600 per week. This was made up of wages and travel allowance. The claimant wanted to keep his wages low for his corporation rent. The claimant himself had suggested the arrangement whereby he worked every second Saturday. The claimant worked most Saturdays in 2005. Then he stopped coming on Saturday. The foreman drove loads.

On the claimant's final day at work, he asked him to work a few Saturdays. The client wanted the machine on site on Saturdays and Sundays and there was another employee available to work the Sundays. Work was getting quiet.

He had been putting plasterboard in a window. The load was parked up and a site manager informed him that the claimant had just walked away.

The claimant only got a payslip when he requested one. He did not have a contract of employment. There was no disciplinary policy in place.

A site foreman gave evidence. The claimant had agreed with the respondent to work every second Saturday. At first he did this, then he stopped turning up on Saturdays.

Determination

The Tribunal carefully considered all the evidence adduced. By a majority decision, Mr. M. Forde dissenting, the Tribunal finds that the claimant was unfairly dismissed. The Tribunal also finds that the claimant by his behaviour contributed to his dismissal. The Tribunal noted that the claimant was not making sufficient effort to mitigate his loss. The claim under the Unfair Dismissals Acts, 1977 to 2001 succeeds. The Tribunal makes an award of €10,000.00.

The Tribunal finds that the claimant is entitled to minimum notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2001. The Tribunal makes an award of €2,200.00, being four weeks pay.

The Tribunal dismisses the claim under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

