

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD89/2008, MN71/2008
WT47/2008

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 J Flanagan BL

Members: Mr R Murphy
Mr C Ryan

heard this claim at Dublin on 16th May 2008

Representation:

Appellant: Carley & Company, Solicitors, 10 Anglesea Street, Dublin 2

Respondent: No representation.

The determination of the Tribunal was as follows:

The Tribunal is satisfied that the respondent was properly notified of the hearing. Neither the respondent nor a representative made an appearance on its behalf.

Appellant's Case

On the T1A form the appellant stated that his employment had ended in June 2007. The T1A form was received by the Tribunal on 29th January 2008. The Tribunal notes that an appeal to the Tribunal must be made within six months of the date of termination of employment. The Tribunal may extend the period for the making of an appeal for a further period of up to six months in exceptional circumstances. It therefore appeared to the Tribunal, at least at first instance, that an issue might arise in relation to time limits as the form T1A had been filed more than six months after the last day worked by the appellant.

The appellant had commenced employment with the respondent as a security guard in November

2002. Although the appellant's hours of work were irregular, the appellant had worked an average of fifty hours per week. On several occasions the appellant had worked well in excess of fifty hours a week. The respondent had never furnished the appellant with a contract of employment and a P45 had not been issued to the appellant at the end of his employment.

The respondent was described as a company which continues to employ up to ninety people, the majority of whom are non-EU nationals. The respondent firm had operated on a number construction sites carrying out work in a security capacity.

The appellant's last day of work was on an unknown date in June 2007. It was on the last day worked by the appellant that the respondent told the appellant to leave that site, giving as his reason the claim that a set of tools had been stolen from the site. The appellant told the Tribunal that he had not been the only person responsible for guarding the site at the time when the set of tools might have been taken. The appellant believed that he alone was told to leave the site because he had made an issue of the conditions of his employment. The appellant subsequently received a cheque in July 2007 from the respondent.

It was sometime in June 2007 that the appellant had received a telephone call from a director of the company about the reported disappearance of a tool kit from the site on which the appellant had worked on during an earlier shift. The director had told the appellant that he no longer wanted to see the appellant on that particular site. The witness told the Tribunal that he had neither stolen nor had any involvement in the reported disappearance of the set of tools and further that the appellant had not any knowledge of any investigation being conducted by the respondent into the disappearance. From that time onwards the respondent never again recalled the appellant for work. The appellant eventually concluded that he had been dismissed.

The Tribunal heard evidence that the appellant had worked on different days of the week and on different sites with little fixed pattern. The appellant was simply telephoned and told when and where to work. The Tribunal is satisfied respondent did not inform the appellant of the termination of his employment in any formal or clear way at any early stage.

The appellant stated that during his time with the respondent the appellant was not granted any leave.

Respondent's Case

No evidence was adduced on behalf of the respondent.

Determination

Having heard the uncontradicted evidence of the appellant the Tribunal finds that the appellant was dismissed. There was no appearance by the respondent and the Tribunal was not satisfied that there was any adequate application of the principles of natural justice and fair procedures in respect of this dismissal. The Tribunal finds that this dismissal was unfair and accordingly, the claim for unfair dismissal succeeds and the Tribunal awards the appellant €14,000.00 in compensation under the Unfair Dismissals Acts, 1977 to 2001. The Tribunal finds the primary remedies of reinstatement and reengagement inappropriate in all the circumstances of this case and in particular the Tribunal has had regard to the fundamental breach of confidence of the appellant in the respondent.

The Tribunal finds that the respondent has failed to discharge his statutory obligations under the

relevant acts as to notice and the Tribunal awards the appellant €2,876.00 in compensation for four weeks' notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

The Tribunal finds the appellant to be a credible witness and accepts his evidence in relation to his claim for paid leave. The Tribunal makes an award of €4,314.00 in respect of his entitlements under the Organisation of Working Time Act, 1997.

The Tribunal is satisfied that it was reasonable for the appellant not to conclude that his employment had been terminated merely by being told to leave that particular site, as the appellant was employed by the respondent to work on a number of sites. The Tribunal is further satisfied that the appellant was unaware that his employment had been terminated with finality until some time had elapsed since he was last called for work. Having carefully considered the matter, in particular the state of knowledge of the appellant and adding on the statutory notice period, the Tribunal finds that the date of termination was no earlier than 31st July 2007 such that application to this Tribunal was made within six months and therefore no issue arises as to time limits.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)