

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
Employee

CASE NO.
UD116/2007

MN74/2007
WT26/2007

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. M. Forde
 Mr. T. Kennelly

heard this claim at Thurles on 20th February 2008

Representation:

Claimant: Brian D. Hughes & Co., Solicitors, "Longmall",
 Slievenamon Road, Thurles, Co. Tipperary

Respondent: In persons

The determination of the Tribunal was as follows:

The case before the Tribunal is one of constructive dismissal. The Respondent company sells farming machinery and heating oil and before that it sold heating oil only. Then the owner amalgamated with another company. The owner asked the Claimant if he wished to join the new company and he did. The Claimant therefore sold oil in the first company and then sold oil and machinery. The Claimant had the use of the company van after work hours. The Claimant was not given a written contract of employment. The company gave evidence that they paid his commission even though he did not achieve sales targets. He was then asked to sign a contract. The sales targets were higher in the new contract. The Claimant did not sign the new contract.

The company requested that the Claimant did not use the van outside working hours. The evidence they gave at the hearing was that their insurance company requested / recommended that for security reasons they keep the vans on company property.

The Claimant told the Tribunal that he had asked his employer on numerous occasions about commission that he was owed. He explained that he was asked to sign a contract and he was surprised as he had been there for a number of years. He asked what would happen if he did not

sign the contract and he was told that he would be dismissed. His sales target effectively doubled. The Claimant explained that he had the use of the company van and that this changed. He explained the effect that this had on him. He did not understand why it would be necessary to have the van at the premises for security, as there was no stock in the van only plastic boxes and brochures. The Claimant eventually phoned the company and told them to collect the van. He was asked if he was leaving the company and he told them that he was.

In replying to questions from the Tribunal the Claimant indicated that there were other salesmen and they were not asked to give up their vans.

The Tribunal heard evidence from a witness who was a salesman. He told the Tribunal that he spoke with the company about working for them. He asked them what areas were involved. They told him Offaly Laois and Tipperary and that they had a salesman in the Tipperary area but that they would “be getting rid of him as he was not up to the job, “they mentioned the name William”.

A witness for the company told the Tribunal that he did not recall having said that at the interview.

Another witness for the Respondent explained that all of the other employees signed the contracts and the Claimant was the only one who didn't. They helped the Claimant out when he had personal difficulties, financially and in any way that they could. The witness stated that their bank records that the Claimant was paid correctly and on time. He accepted that it was a change that the Claimant had to leave the van at the company premises but the insurance company pressurised them to do that.

Determination:

The Tribunal find that the employer acted unreasonably in changing the contract such as to bring a fundamental change in conditions. He was required to achieve a sales target, which in the opinion of a witness, not now at the Respondent company, was unachievable. He was asked to sign the contract under duress. The van was taken from him.

Accordingly, the Tribunal finds that the claim under the Unfair Dismissals Acts, 1977 to 2001, succeeds. The Tribunal award the Claimant the sum of €15,000.00, having regard to all the circumstances.

The claim under the Minimum Notice and Terms Of Employment Acts, 1973 to 2001, fails.

The claim under the Organisation Of Working Time Act, 1997, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

