

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM(S) OF:**

Employee

against

Employer

under

**CASE NO.**

WT39/2007

UD146/2007

### 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  
Ms. R. Kerrigan

heard this claim at Letterkenny on 10th April 2008  
and 7th July 2008

**Representation:**

Claimant(s) : Mr Martin O'Rourke, SIPTU, Port Road, Letterkenny, Co. Donegal

Respondent(s) : Sheridan & Co., Solicitors, Lower Main Street, P.O. Box 83, Letterkenny,  
Co. Donegal

The determination of the Tribunal was as follows:-

**Claimant's Case:**

The claimant gave evidence. He commenced employment with the respondent on March 7<sup>th</sup> 2005 to carry out electrical work. He stated that he had completed a "safe pass" course.

He told the Tribunal that he had consulted with friends and knew he was entitled to twenty days holidays a year. While working for the respondent the claimant stated that he had taken fifteen days holidays over a period of eighteen months. When asked, he said that he was unsure of the time he took off over Christmas 2005. When asked he stated that he had not been issued payslips nor was he given a contract of employment. He was surprised his employment was terminated.

On cross-examination he explained that three other staff that had been employed after his commencement and had remained working for the respondent after his termination. When asked, he stated that he was not a qualified electrician. When asked where he had worked for the respondent, he stated that the hotel he had worked on completed in July 2006. After this time he worked in the private residence of the respondent's first witness (known as LOH) and a sports hall.

When put to him, he said that LOH had not told him that if business picked up he, (LOH), would get in touch with him. He said that he had been friendly with LOH who had attended his

child's christening. On September 18<sup>th</sup> 2006, LOH informed him that there was no more work for him. When put to him he said that two other people had been let go around the same time as him but stated that one of these had been an apprentice and was only employed for a few months. He again stated that staff that had been taken on after him had not been terminated. When put to him he was not aware that two of his former colleagues were qualified in first aid and PLC programming. He explained that he and these two former colleagues had performed the same duties. When asked by the Tribunal he stated that he had worked on Saturdays for the respondent.

The claimant gave evidence of loss and was currently unemployed.

On re-examination on the **second** day of the hearing the claimant stated that he had never been asked to drive for the respondent but had driven to work himself for a period of one month as he had a loan of his brother-in-law's car. He did not possess a car of his own at the time. When asked, he stated that after his dismissal he had returned to Poland to acquire a different category of driving licence. When asked, the claimant stated that he was still unemployed.

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

One of the Directors (LOH) of the respondent company gave evidence on the **first** day of the hearing. He explained that the company were electrical contractors. At the time of the claimant's employment, he had employed eighteen staff and now there were fourteen.

He explained that when he had hired the claimant the respondent company had not really needed him. The claimant had been renting a property owned by the witness's father.

Due to the downturn in work he decided that some staff would have to be let go. He stated that before deciding who was to be let go, he had studied his list of employees and the skills they had. The witness explained that the claimant had been working on a major project in Letterkenny. This project was completed, before schedule, in July 2006. He explained that he tried to keep the claimant on and had him carrying out work in his (the witness's) home. The witness told the Tribunal that he created more work for the claimant to carry out. He explained that the two employees (named by the claimant) that had remained working for him were both qualified.

On September 18<sup>th</sup> 2006 the claimant was working in the witness's house and clearing up the stores. The witness told the Tribunal that he could find no more work for the claimant to carry out. He picked the claimant up, drove him to his own home and informed him that he was letting him go. The claimant was the third member of staff to be let go. The witness explained to the Tribunal that he had tried to keep the claimant employed, as he knew the claimant had to reside in the country for at least two years before he could claim child benefit.

When asked, he stated that all his staff had completed the "safe pass" course. When asked he stated that the claimant had not been paid for his nineteen days absent. He explained that there had been times that the claimant had to go home early and as he could drive, the witness would pick him up and drop him home. He also stated that the claimant had been given twenty-nine days leave while working for him.

When asked, he stated that the claimant had been very disappointed to be let go but that he had had no alternative. When asked, he agreed that the claimant had worked on Saturdays and had taken a day off in lieu in return. When asked, he stated that anyone that had been employed since the claimant was let go were either apprentices or qualified electricians.

On the **second** day of the hearing he stated that he could not recall if the claimant drove to work.

He said that he was unaware if the claimant possessed a driving licence. The claimant had never mentioned the fact and the witness explained that he would have been an advantage for the claimant if he had been aware.

On cross-examination he said that having no licence had been one of the reasons the claimant had been dismissed. When asked how he knew of his staff's qualifications, he replied that they had informed him.

An employee of the respondent gave evidence. He stated that the claimant had been employed before he commenced employment with the respondent.

When asked, he stated that, at first, he had no "safe pass" but had signed up to attend the course on the first occasion. When asked, he stated that the other employees, including the claimant, showed him what to do on-site.

On cross-examination he stated that he had trained as a lifeguard, was trained in first aid and possessed a driving licence.

The office secretary for the respondent gave evidence. She stated that she had not worked for the respondent when the claimant was first employed. She listed the sixteen days annual leave the claimant had taken in 2005 and the fourteen days he had taken in 2006. When asked, she stated that she had compiled the list of the claimant's annual leave.

**Determination:**

Having heard the evidence adduced on both days of the hearing the Tribunal finds that the claimant was dismissed and that it was procedurally unfair. However, the Tribunal finds that the claimant did not adduce sufficient evidence to mitigate his loss.

Accordingly, the Tribunal awards the sum of € 1,300 under the Unfair Dismissals Acts, 1977 to 2001. The claim under the Organisation of Working Time Act, 1977 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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