

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

WT104/2008
UD219/2008

Against

Employer

under

ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr. D. Winston
Mr. N. Broughall

heard this claim at Dublin on 10th June 2008

Representation:

Claimant(s): The claimant in person

Respondent(s): Company Representative

The determination of the Tribunal was as follows:-

Respondent's Case

PT for the respondent told the Tribunal that when the claimant returned from college he was over confident in his ability to do his job and he thought that he was a plumber. He asked the claimant on two occasions to report to different sites. The claimant became argumentative when he was given instruction and he told PT that it was not his job. The claimant took time off work and he would contact him by text that he was not going to be in work. The claimant reported late for work and he stated that the claimant did not want to be in work. He needed the claimant to work with a plumber to get work completed. On one occasion he received a text from the claimant at 1.30a.m. that he would not be in work the next day, PT had a job organised and this was the final straw. He could not rely on the claimant. He gave a letter to all employees regarding contacting him by text and this was directed to the claimant. At one stage the claimant was on temporary lay off for four weeks.

Claimant's Case

The claimant told the Tribunal that as he was ill with tonsillitis the only way he could contact PT was by text. PT did not have work for him and therefore he could not work. PT would not answer his telephone, PT sent him a text and told him that he was dismissed. The other plumber was constantly late. The majority of sites that he worked on were located near his home and he cared about his work. He wanted to learn and to work. He took one day off work on one occasion as his car was stolen. The respondent was not doing well and PT was trying to get rid of employees due to a lack of work. The claimant contacted FAS who informed him that if he had no work he would have to find a new employer. He was angry about the fact that he was dismissed. He now undertakes work in car valeting and no employer wants to employ him due to the case that he took against his employer.

Determination

The employer agreed that he owed the claimant €1209.60 which deals with the claimant's claim under the Organisation of Working Time Act, 1997

The employer objected to text messages and the manner in which staff and in particular the claimant notified him regarding sick leave. Notwithstanding that he himself dismissed the claimant with a text message

Due to the conflict of evidence and to the fact that the employer would have been in a position to temporarily lay off the claimant as he had previously done the Tribunal are not entirely satisfied with the evidence as given by the claimant. However the manner in which the employer dealt with the issues was erroneous and unfair and the Tribunal awards the claimant compensation of €2000,00 under the Unfair Dismissals Acts, 1977 to 2001 which reflects the fact that both parties were to a lesser or greater extent at fault.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

