

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO.UD595/2007  
RP277/2007  
MN430/2007

against  
2 Employers

under

### **UNFAIR DISMISSALS ACTS, 1977 TO 2001 REDUNDANCY PAYMENTS ACTS, 1967 TO 2003 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J O'Connor

Members: Mr M Forde  
Mr K O'Connor

heard this claim at Killarney on 26th June 2008

Representation:

Claimant: John F Daly & Co, Solicitors, Kanturk, Co Cork

Respondent: O'Callaghan Daly, Solicitors, 3 Lower Mallow Street, Limerick

The determination of the Tribunal was as follows:

Claimant's Case

The claimant was employed as a steel erector by the respondent company from 18<sup>th</sup> April 2003 until 7<sup>th</sup> January 2007. Prior to Christmas 2006 the claimant worked at a site in Co Clare. The job could not be finished before Christmas as planned, so, on Saturday 23<sup>rd</sup> December, the Managing Director (MD) asked that the company van, which the claimant had use of, be left in the company yard over Christmas, to facilitate MD finishing the job over the holidays. The claimant left the van, with some of his belongings in it, in the yard and got a lift home from a colleague. The items included his driver's license, front door key, safe pass, and his tools.

The claimant expected to resume work on Monday 7<sup>th</sup> January and phoned MD three or four times the Saturday before to arrange to collect the van. The claimant was told that MD was out. The claimant's daughter (CD) gave evidence that she phoned MD on Monday morning but he was unavailable. When MD phoned back he began shouting and using foul language at CD that the claimant didn't do his job properly and was causing other staff to leave. MD said that the claimant would get his belongings back and hung up. The claimant then believed that he no longer had a job with the respondent company. When the claimant hadn't received his belongings he instructed a solicitor who wrote to MD. The claimant was later paid €425.00 and given his

P45, his drivers license and safe pass were also returned. The claimant argued that if he had intended to leave the employment, as suggested by MD, he would have brought his personal belongings with him when he left back the van.

Respondent's Case:

The Managing Director (MD) of the respondent company contended that the claimant left his employment by virtue of not appearing for work on Monday 7<sup>th</sup> January 2007. Two months prior to Christmas the claimant had demanded to have his wages increased to the same amount that other employees were getting and said that he would stay until Christmas. MD gave the claimant a salary increase. MD didn't know whether he would see the claimant after Christmas, but assumed he would. On previous occasions the claimant had said he would leave but didn't. MD had asked the claimant to leave the van for him so that he could finish the job over Christmas. Employees were not required to supply their own tools and all the tools in the van belonged to the company. MD didn't make contact with the claimant after Christmas and was unaware of calls from the claimant prior to Monday 7<sup>th</sup> January. MD couldn't recall what he said to the claimant's daughter. MD didn't attempt to make contact with the claimant after that as other employees told him that the claimant had intended to leave. He considered that the claimant could have gotten a lift from another employee on 7<sup>th</sup> January.

Determination:

Having heard conflicting evidence from the parties the Tribunal finds that there was a dismissal, and accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2001 succeeds. The Tribunal awards the claimant €2,055.00 (two thousand and fifty-five euro) under that act.

As the Redundancy Payments Acts, 1967 to 2003, and Unfair Dismissals Acts, 1977 to 2001, are mutually exclusive the Tribunal finds that the claim under the Redundancy Payments Acts, 1967 to 2003 fails.

The Tribunal finds that the claimant was due two weeks statutory notice of termination of employment and accordingly the claim under the Minimum Notice And Terms Of Employment Acts, 1973 To 2001, succeeds. The Tribunal awards the claimant €822.00 (eight hundred and twenty-two euro) under that act.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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