

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

MN262/2007

UD386/2007

WT117/2007

against
Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Ms M. Sweeney
Mr K. O'Connor

heard this claim at Tralee on 10th June 2008

Representation:

Claimant(s) : Mr. Dermot F. O'Driscoll, John J. Murphy & Co., Solicitors, Courthouse Chambers,
27-29 Washington Street, Cork

Respondent(s) : Mr. Breffni O'Neill, Construction Industry Federation, Construction House,
Canal Road, Dublin 6

The determination of the Tribunal was as follows:-

Respondent's Case:

The claimant commenced employment as a civil engineer with the respondent in September 2005. The claimant was working on a site in Tralee at the time of his dismissal. The two other engineers working in Tralee had a later start date than the claimant with the respondent, one commenced in November 2005 and the other in mid 2006.

The number of workers on a site is constantly reviewed and if there is no further requirement for an employee's skills on a site he is either transferred to another site where work is available or else he is dismissed. The Construction Director, who is based in Dublin, makes the decision as to who is to be dismissed.

It was the respondent's case that the claimant was dismissed on 20 February 2007 by reason of redundancy. The claimant had not been replaced and the site gradually finished up. There was a major downturn in the construction business and between February 2007 and June 2006 the number of the respondent's employees reduced from 403 to 252. On the Friday prior to the claimant's being let go 23 other employees had been let go. The claimant was not provided with a written contract of employment or a grievance procedure but it was known to most of the employees that they could appeal a dismissal.

There was an open door policy and staff could ring the Construction Director. The respondent operated within the industry's code of practice. Due to an administrative oversight the claimant was not paid his standard notice or his due holiday payments until 26 April 2007. The Site Agent (Senior Administrator) is the "number one man on site" but he has no authority to dismiss staff "off his own bat". 3 or 4 engineers were let go at Christmas 2007. The Site Agent was let go in May 2007.

Claimant's Case:

The claimant's evidence was that he had been given permission from the Site Agent to be absent from the Tralee site on 20 February 2007 because he had an appointment to take his car for an emissions check at the NCT centre in Limerick and he also had to check/complete work on a site there where some of his workers were doing snagging works. On 20 February 2007 when he was on the site in Limerick he received a call from the site agent telling him there was an overfill of concrete in a floor on the Tralee site and that it was his fault because he should have been there to oversee it. When the claimant reminded the Site Agent that he had authorised his absence from the site he replied, "tough luck". The site agent then told the claimant that the Construction Director had instructed that he be given his notice because the overfill in the floor was his fault. He asked the Site Agent for his notice in writing and the site agent told him he would give it to him the next time he saw him. The site agent rang the claimant back 10 minutes later and told him not to bother returning to Tralee the following day and to have a look at *construction.jobs.ie* (website). The engineer on site is responsible for setting the level of the concrete. This was not his duty, he was not present on the day in question and there was another engineer on site. Redundancy had not been mentioned to the claimant at the time. He remained in Limerick that day. He was not aware of any appeals process in the company. He made several attempts to contact the Construction Director over the following two days but he never answered his calls. He had never received any verbal or written warnings. It was some months before the respondent paid him any of the money due to him. He was 8 weeks without pay or a job and could not pay his bills. He secured employment at a lower salary.

Determination:

From the evidence adduced, the Tribunal is satisfied that the claimant was dismissed for the overfill of the cement in the floor which occurred on 20 February 2007 when he was absent from the site. The claimant had permission to be absent from the site on the day. Therefore, he was not at fault in the overfill.

Accordingly, the dismissal is unfair and the Tribunal awards the claimant the sum of €21,000 under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal also awards the claimant the sum of €173.08, being the sum for one day's annual leave, under the organisation of Working Time Act, 1997. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2003 is dismissed because the claimant received his entitlement under those Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)