

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
Employee

CASE NO.  
MN211/2007  
UD316/2007

Against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001  
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Mr J. Hennessy  
Mr. T. Kennelly

heard this claim at Horse & Jockey on 12th June 2008

Representation:  
\_\_\_\_\_

Claimant(s) :

Mr. Philip English, English Leahy, Solicitors, 8 St.  
Michael Street, Tipperary Town

Respondent(s) :

David Shehan & Co., Solicitors, 5 Upper  
Hartstonge Street, Limerick

**The Determination of the Tribunal was as follows:-**

This matter came before the Tribunal for hearing on the 12<sup>th</sup> of June 2008. Evidence was heard from the Claimant and two directors of the Respondent Company.

The confluence of the evidence establishes the following:

The Claimant was born on the 31/10/83. He commenced employment with the Respondent Company on the 19<sup>th</sup> of September 2005. His employment ended on the 24<sup>th</sup> of January 2007.

The Claimant commenced work with the Respondent Company around the time of its establishment. He had worked with a director of the Respondent Company previously in another business.

The Claimant was initially engaged to discharge cargo from lorries at the Respondent's depot in Cashel. This work involved the operation of a forklift and breaking down of loads for dispatch the following day. Initially the Claimant worked from approximately 9.30 p.m until 2 or 3 a.m or whenever the loads were discharged. Sometime later the Claimant sought more work and the Respondent agreed to let him also participate in the loading of the trucks in the morning time. This work used to start about 6.00 a.m. Consequently, the Applicant was now working from 9.30 p.m until about 3.00 a.m. and then recommencing at 6.00 a.m. until approximately 10.00 a.m.

There would be a lull between 3.00 a.m and approximately 5.30 a.m in the morning, and because of the distance from his home the Claimant developed the practice of remaining in the warehouse and sleeping there until such time as the Respondent came into work in the morning to commence loading the trucks. In general the Claimant would sleep in his car for a few hours. Subsequently he moved a couch, the property of the Respondent, which was being stored on the premises, into the office and he used to sleep there. Essentially, the Claimant would be on the Respondent's premises either working or resting from approximately 9.00 p.m until at least 10.00 a.m. the following day. This was approximately 13 hours with a down period of about 2 hours. For this he was paid €350.00 per week.

Ultimately in or around January 2007 the Respondent remonstrated with the Claimant in respect of the fact that he was sleeping and made a remark to him to the effect that he was not paying him to sleep. The Claimant indicated that if he couldn't have a rest during the course of the night that he couldn't work. He said words to the effect that if he was not allowed to get some sleep during the night that he was going to give his notice.

The Claimant said that this was this was the only indication that he gave of his dissatisfaction with the situation. The Respondent said that he thought that this was notice of resignation on the part of the Claimant, but that he thought that the Claimant would “come back to him”. Ultimately, the Respondent told the Claimant that he had now hired somebody else to do his job. The Claimant was totally taken aback by this.

Having regard to the evidence the Tribunal determines as follows:

1. The Claimant was working long antisocial hours and it was reasonable for him to seek to have a rest during the course of the night when there was no work to be done in the warehouse.
2. The Respondent acted unreasonably not engaging with the Claimant in relation to his grievance with regard to rest during the night and failed in its responsibility to the Claimant in this regard.
3. By employing another individual to take on the employment of the Claimant, the Respondent acted unfairly.

In the circumstances the Tribunal finds that the Claimant was unfairly dismissed and determines that damages are the most appropriate remedy. The Claimant was out of work for a period of months after his dismissal and the Tribunal accepts that he made a reasonable effort to find employment during that period.

In all the circumstances the Tribunal makes an award of damages of €11,650.00 under the Unfair Dismissals Acts 1977 to 2001. The Tribunal further awards the sum of €350.00 being the equivalent of one weeks wages under the Minimum Notice and Terms of Employment Acts 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

