

## EMPLOYMENT APPEALS TRIBUNAL

Claims of:  
Employee

Case no.  
UD459/2007  
WT136/2007

against

Employer

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr. J. Browne  
Ms. E. Brezina

heard this claim at Wexford on 4th June 2008

#### **Representation:**

Claimant: Mr. Michael Binchy B.L. instructed by Ms. Melody Revington,  
Tiernan & Co., Solicitors, 144 Lower Baggot Street, Dublin 2

Respondent: Mr. Brendan McCarthy, 36 Deerpark Road, Mount Merrion, Co. Dublin

#### **The determination of the Tribunal was as follows:**

The above claims were heard simultaneously with claims UD460/2007 & WT137/2007

#### **Preliminary Issue:**

At the outset of the hearing the Tribunal heard an application for an extension of the stipulated six-month time limit as the claim was lodged to the Tribunal outside of this time. The claimant's T1A form was lodged to the Tribunal on the 30 April 2007.

It was the claimant's case that his employment was terminated on the 5 October 2006. The claimant and two colleagues met with a solicitor on Saturday, 4 November 2006. The meeting lasted three hours. The solicitor told them he would prepare documents on their behalf to the

Tribunal. The claimant and his colleagues each paid the solicitor a sum of money. They attempted to contact the solicitor a number of times after this and they were reassured that the forms were lodged to the Tribunal. Subsequently, the claimant signed and dated a T1A form on the 25 April 2007 and his claims were lodged to the Tribunal on the 30 April 2007.

The Tribunal heard that the solicitor engaged by the claimant was subsequently dismissed from his employment.

### **Determination on Preliminary Issue:**

Having heard the submissions regarding the claimant it was the unanimous view of the Tribunal that such circumstances existed to allow the Tribunal to apply its discretion and extend the time limit for the lodgement of claims from six months to twelve months as set out under Section 7(2)(b) of the Amendment Act.

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

Dismissal as a fact was in dispute between the parties. The respondent did not adduce evidence in relation to this matter.

### **Claimant's Case:**

The claimant stated that on the 4 October 2006 he had worked all day from 6.45am. Mr. R of the company instructed the claimant to travel to Spain via the 9pm ferry from Rosslare. The claimant was over his tachograph hours when he was given this instruction but he was told to insert a new tachograph disc. However, a tyre problem on the lorry delayed him and he returned to the respondent's yard. He told Mr. R that he could not work more hours, as he was too tired and needed to rest. Another driver was then given the key to the claimant's lorry. Mr. R told the claimant to meet with Mr. S of the company. When the claimant met Mr. S the next day he was told that the company only needed good drivers and if he was not willing to go to Spain, he was to leave the respondent's yard.

The claimant gave evidence relating to his loss.

Answering questions from the Tribunal the claimant stated that at the time of the 4 October 2006, he had slept three hours in the previous 24 hours due to work.

### **Determination:**

The respondent furnished no evidence to the Tribunal disputing the statement by Mr. S and accordingly the Tribunal must accept the statement by the claimant that he was unable to continue work because of the excessive hours he had worked prior to this conversation. Accordingly the Tribunal is of the view that as a result of this conversation he was left with no option but to treat his conversation with Mr. S as a dismissal as Mr. S was a person who had the authority to dismiss employees, and in the circumstances it is the view of the Tribunal that the dismissal was unfair.

The Tribunal awards the claimant €2,654.00 for his successful claim under the Unfair Dismissals Acts, 1977 to 2001.

The claim under the Organisation of Working Time Act, 1997 was withdrawn during the course of the hearing.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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