

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

2 Employees

UD529/2007
MN386/2007

UD530/2007
MN387/2007

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: Ms. B. Glynn

Members: Mr. T. Gill
Mr. J. LeCumbre

heard this claim at Roscommon on 16 April and 5 June 2008

Representation:

Claimants:

Mr. Anthony McCormack, SIPTU, Sligo Branch, Hanson Retail Park, Cleveragh, Sligo

Respondent:

Mr. John Brennan, IBEC, West Regional Office, Ross House, Victoria Place, Galway

The determination of the Tribunal was as follows:

The first named claimant worked for the respondent from 22 September 2000 as a general operative in the respondent's beef boning operation. The employment was uneventful until 23 April 2003 when he sustained a work related knife injury to his left wrist. The first named claimant never returned to work after sustaining this injury.

The first named claimant took a previous claim for unfair dismissal to the Rights Commissioner service arising from this incident and in a hearing on 5 October 2006 the Rights Commissioner found that the first named claimant had not been dismissed but that he could be taken back into work once he had been cleared to return on medical grounds. The company doctor last examined him on 20 October 2006 and the doctor stated on that occasion that he could not recommend that the first named claimant, either for his own safety or for the safety of his fellow workers, should work in the robust environment of a meat factory.

The first named claimant's position was that he was available for light work; the respondent's position was that there was no light work available in their factory.

Following the doctor's report the claimant was called by letter of 10 November 2006 to a meeting with the financial controller on 17 November 2006 to discuss the report and his future with the respondent. Following this meeting, which the first named claimant attended with his shop steward the claimant was advised by letter of 29 November 2006 of the immediate termination of his employment because of his being unfit to return to work after an extended period of absence from work.

Determination:

The question to be considered here is whether the first named claimant was capable, under section 6 (4) of the 1977 Act, of doing the work for which he was employed. The evidence given by the company doctor made it abundantly clear that this was not the case, as he stated, inter alia, that "there was no function in his hand for boning." The first named claimant claimed that he was capable of carrying out light work but the Tribunal accepts that there were no positions available in the respondent company that would constitute light work, which the first named claimant was seeking. The Tribunal is satisfied that the first named claimant was dismissed by reason of incapacity to carry out his job as a general operative in the meat factory pursuant to section 6 (4) of the 1977 Act, and for this reason the Tribunal finds that the dismissal of the first named claimant was not unfair. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2001 must fail. In addition, as the first named claimant was not available for work at the time of his dismissal his claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 also fails.

The claims of the second named claimant under both the Unfair Dismissals, 1977 to 2001 and the Minimum Notice and Terms of Employment Acts, 1973 to 2001 fail for want of prosecution.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)