

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
MN371/2007

Against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Quinn BL

Members: Mr. G. Phelan
Dr. A. Clune

heard this claim at Limerick on the 19th May and 21st July 2008

Representation:

Claimant: In person

Respondent: Mr Brian McEnery, Horwath Bastow Charlton, Horwath House,
The Red Church, Henry Street, Limerick

The determination of the Tribunal was as follows:

This case came before the Tribunal by way of a related claim against the decisions and recommendations of a Rights Commissioner reference numbers UD46255/06/MR and TE 46253/06/MR, for which a decision has also been made by this Tribunal.

There was no appearance entered before the Tribunal, by or on behalf of the Respondent in this case.

The Tribunal was satisfied that the Respondent was aware of this hearing and had been properly notified of the hearing dates.

There was no appearance at the hearing by, or on behalf of the Respondent.

The only evidence adduced before this Tribunal, was the uncontroverted sworn testimony of the Claimant, which was adduced on the 21st July 2008, through the medium of a translator appointed by the Employment Appeals Tribunal, in the aftermath of the sitting of the 19th May 2008, at which it had become apparent to the Tribunal, that such a service was both desirable and appropriate in this instance.

The Claimant is a Russian national. He commenced employment with the Respondent in or about the month of May 2004. Whilst he worked different hours each week, on average he was employed for sixty-six hours a week. The Claimant commenced being paid at an hourly rate of €7.50 per hour, which rose to a rate of €8.50 per hour, in the course of the second year of his employment with the Respondent.

The Claimant recounted how on the afternoon of the 3rd July 2006, he received a telephone call to meet a representative of the Respondent at O'Connell Street, Limerick. The Claimant attended at this meeting at approximately 5 o'clock that evening, as he was scheduled to commence work at 6pm on that date. At that meeting, a number of allegations concerning, in the first instance, a failure on his part to perform the tasks for which he was employed and in the second instance, repeated unwarranted absenteeism from his place of employment, were put to the Claimant who was advised by the Respondent to return home and remain away from his place of employment, until after the Respondent had analysed closed circuit television records and reverted to him.

Thereafter, in the absence of hearing from the Respondent at all, the Claimant visited the premises on a number of occasions to ascertain the position and ultimately on or about the 17th July 2006, when he met with the Respondent's managing director, the Claimant was made none the wiser, but the Respondent demanded and obtained from him, the electronic key to the premises which had remained in the Claimant's possession. As a result of this exchange, the Claimant considered that he had been dismissed from his employment with the Respondent.

On the basis of the evidence adduced by the Claimant, the Tribunal is satisfied on the balance of probabilities that all of the circumstances of the interaction between the parties in the month of July 2006, following the confrontation and verbal exchange on the 3rd, are such that, it is more likely than not, that a dismissal of the Claimant was intended and effected by the Respondent, or that such may reasonably be inferred as having been so intended and effected by the Respondent, which in fact and in law occurred. The Tribunal is satisfied in all of the circumstances that a reasonable employee would have understood the Respondent's intention and actions as terminating his employment and it was reasonable for the Claimant to so conclude and believe that he had been dismissed by the Respondent.

In so far as the claim of the Appellant under the Minimum Notice And Terms Of Employment Acts 1973 to 2001 is concerned, having considered the uncontested evidence of the Claimant, the Tribunal is satisfied that he neither received notice, or payment in lieu of notice, in respect of the termination of his employment by the Respondent and accordingly awards him the sum of €1,122, as compensation in respect of the Respondent's failure to accord him his statutory entitlement of two weeks notice in that regard.

Sealed with the Seal of the
Employment Appeals Tribunal

This

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(Sgd.)

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(CHAIRMAN)