

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO:

Employee

UD477/2007

MN325/2007

WT 139/2007

against

Employer

under

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

I certify that the Tribunal  
(Division Of Tribunal)

Chairman: Mr. P. Quinn BL

Members: Mr. Casey  
Dr. A. Clune

heard this appeal at Limerick, on 30<sup>th</sup> May 2008

Representation:

Claimant: Mr. Michael. Purtill BL

Instructed By Michael B. O'Donnell  
Solicitor, Rathkeale, County Limerick

Respondent:  
No representation or appearance.

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

There was no appearance at the hearing by, or on behalf of the Respondent. The Tribunal was satisfied that the Respondent was aware of the claim and had been notified of the hearing. The only evidence adduced before this Tribunal, was that of the Claimant.

The Tribunal heard that the Claimant commenced employment with the Respondent in or about the month of October 2005 and that as a fact, he was dismissed from his employment with the Respondent on the 6<sup>th</sup> February 2007, notwithstanding that the P45 with which he had been issued and was provided to the Tribunal identified a cessation date of the 22<sup>nd</sup> December 2006.

In the light of the foregoing and in the absence of evidence from the Respondent to justify the dismissal of the Claimant, as required by the provisions of the Unfair Dismissals legislation, the Tribunal determines that the dismissal of the Claimant was unfair.

The redress sought by the Claimant was compensation and in the absence of any evidence from the Respondent, the Tribunal determines that compensation is the appropriate remedy in all of the circumstances of this case and that neither re-instatement nor re-engagement of the Claimant by the Respondent would be appropriate in this instance.

In determining how much compensation was to be awarded, the Tribunal was obliged to take into account the efforts of the Claimant to mitigate his loss and the extent to which the Claimant's financial loss was as a result of the Respondent's conduct and the extent, if any, to which the Claimant's financial loss was as a result of his own conduct.

The tribunal heard and has accepted that the Claimant's average gross weekly wage with the Respondent prior to his dismissal was in the order of €625. The tribunal heard and accepts that, following his dismissal by the Respondent, the Claimant obtained alternative employment with a construction company in or about the middle of April 2007. A number of the Claimant's payslips in respect of his current employment were introduced into evidence before the Tribunal and the Tribunal accepts that as and from the middle of April 2007, the Claimant's average gross weekly wage is and has been in the order of €440.

Accordingly, the Tribunal accepts that the Claimant has incurred a financial loss to date on account of his dismissal and which also appears to be ongoing.

In such circumstances, the Tribunal is disposed to also award the Claimant a sum for prospective loss of income. However, it has to be acknowledged that the Tribunal's assessment in that respect is inevitably somewhat speculative.

The Claimant is a foreign national. He has no qualifications. Whilst he appears to have a reasonable understanding of the English language, his proficiency in its speech is somewhat limited. He is presently employed as a labourer in a construction company. His present employment situation may also be somewhat precarious in the current economic climate.

In all of the circumstances, the Tribunal has determined that the sum of €22,000 is just and equitable compensation for the Claimant under the provisions of the Unfair Dismissals legislation.

The claim under the Organisation of Working Time Act 1997 was not pursued and stands dismissed.

The Tribunal further awards the Claimant the sum of €625 in respect of his claim under the Minimum Notice and Terms of Employment Acts 1973 to 2001.

Sealed with the Seal of the  
Employment Appeals Tribunal

This  
=====

(Sgd.)  
=====  
(CHAIRMAN)