

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

MN260/2008

against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Ms. M. Sweeney
Mr. K. O'Connor

heard this claim at Tralee on 16th October 2008

Representation:

Appellant(s): In person

Respondent(s): In person

The decision of the Tribunal was as follows:-

The appellant was rostered to work on the nights of Friday, Saturday and Sunday, 8, 9 and 10 February as a security officer at an asylum centre. On the Saturday, after suffering an injury, he visited his doctor who certified him as unfit to work until the following Wednesday. On that Saturday, the appellant telephoned the respondent and spoke to the manager on duty at that time. The appellant was told to telephone the office again on the Monday.

On the Monday, the appellant telephoned the office and faxed in his sick certificate. The certificate certified him for sick leave until the following Wednesday. The appellant believed that it was the manager he spoke to on the Monday. When he told that person that his injury might keep him out of work for longer than that the following Wednesday, he was told that if he was not back, work would not be waiting for him.

While the manager agreed that he spoke on the telephone with the appellant on the Saturday, he denied that it was to him that the appellant had spoken to on the Monday. He had not spoken to the appellant after their Saturday conversation.

The manager explained that the asylum centre had requested that a number of security officers, including the appellant, be removed from their site at the centre due to their poor work performance. The reshuffle of staff took place while the appellant was absent on sick leave.

The appellant did not agree that the asylum centre had wanted him removed from working there as he had been a good worker and had been willing to cover shifts at short notice. During a subsequent telephone conversation with whom he believed to be the rostering manager, this person told him that he knew nothing about his being removed from working at the centre and that he would be rostered to work at the asylum centre again as he was a good employee. This person was meant to telephone back with the work roster but he did not do so.

The manager told the Tribunal that the appellant had been offered alternative work on day shifts by the person he spoke to but had refused it because he cared for his children during the day while his wife worked. The appellant denied that he had been offered work on day shifts.

Determination:

Having carefully considered the evidence adduced, the Tribunal finds that in light of the comments made to the appellant in the Monday telephone call and the fact that, following the third telephone call, he was not contacted with an offer of work, it was reasonable for him to believe that he had been dismissed. Having had, at that time, almost one full year's service with the respondent, the appellant is entitled to one week's notice of termination of employment. In documentation opened to the Tribunal, arrears for overtime and holiday entitlements were shown to have been paid to the appellant. However, these arrears did not include a payment in lieu of notice. Accordingly, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 succeeds and the Tribunal awards the appellant the sum of €496.00 under the Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)