

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
Employee
WT355/2007
against
Employer

CASE NO.
UD1046/2007

under

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

I certify that the Tribunal
(Division of Tribunal)
Chairman: Mr J. O'Connor
Members: Mr. M. Forde
Mr D. Mc Evoy

heard this claim at Killarney on 10th October 2008

Representation:

Claimant: Mr. Con Casey, Siptu, Connolly Hall,
Upper Rock Street, Tralee, Co. Kerry
Respondent: Mazhar Ali Baig, C/O Moghul Restaurant, Bantry Co. Cork

The Tribunal heard evidence from the Claimant and the Respondent.

Determination:

There was a preliminary point addressed by the Tribunal as to whether there was a transfer of undertaking in this case. The Tribunal, having heard the evidence determine that there was a transfer of undertaking and that the above named respondent is the employer.

The Tribunal heard evidence from the employer that he had concerns about the employee's behaviour. He received a phone call about an alleged incident. In cross-examination he was asked when the alleged incident took place but could not say when. In the letter of dismissal that was opened by the Respondent to the Tribunal there was no reference to any incident whatsoever. The Respondent did not produce any witness or witness's to give evidence as to any incident (that he had told the Tribunal had been alleged to him in a telephone conversation).

Having carefully considered all the evidence adduced in this case the Tribunal determines that the dismissal was unfair. The Tribunal also determine that the most appropriate remedy in this case to be compensation. Accordingly, having regard to all the circumstances, the Tribunal awards the Claimant the sum of €2,000.00, as compensation under the Unfair Dismissals Acts, 1977 to 2001.

The claim under the Organisation Of Working Time Act, 1997, is dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

