

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

UD926/2007, MN721/2007  
WT309/2007

Against

Employer

Employer

Employer

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 D. Mahon B.L.

Members: Mr J. Goulding  
Ms K. Garvey

heard this claim at Wicklow on 10th April, 24th June and 25th September 2008

### **Representation:**

Claimant : Mr Tommy McNamara B L instructed by  
Mairead Bourke, Solicitors, Market Street, Westport, Co. Mayo

Respondent : Ms Cliona Kimber B L instructed by  
Miley & Miley, Solicitors, 35 Molesworth Street, Dublin 2

The determination of the Tribunal was as follows:

### **Respondents' Case**

Apart from their equestrian activities, which closed in September 2007, the respondents were also engaged in providing accommodation on a recreational basis to the public. Their sole witness was the son of one of the named respondents in this case and general manager of this centre. In addition to holding an amateur jockey's licence the witness had many years experience working with horses, and held a fully licensed qualification as a racehorse trainer.

The witness recruited the claimant on a part time and three-month trial basis in March 2006. No contract of employment issued to the claimant. His scheduled hours were from 08.00 to 13.00 on a five-day week. The claimant who also had an amateur jockey licence exercised and rode horses mostly in the racing yard. The witness detailed several types of horses and outlined some of their needs and characteristics. At that time there were “only a handful of trainers” at the respondents. By the autumn of 2006 the respondents hired two addition-qualified riders. Different categories of riders and jockeys were needed at that time to deal with the variety of horses under training.

In early April 2007 the claimant received a week’s notice that he was being laid off, due to the reduction and restructuring of the equestrian aspect of their business. At that time the claimant was due to return to work in early June 2007. He seemed to happily accept that situation and besides he had another job elsewhere to go to on a fulltime basis. The respondents advertised and took on a new employee referred to as a head lad in the summer of 2007. The new employee was not a replacement for the claimant as their jobs were different.

Subsequent to the claimant’s lay-off he opted to undergo surgery. The claimant did not inform the witness he was doing this nor contact him between 13 April and the end of May 2007. Around the 31 May the witness phoned the claimant and told him that his services were no longer required at the respondents. The situation there had so changed that there was no longer suitable work available for him. At the time the respondents needed a fulltime rider and deemed the claimant ineligible for such a position. The claimant did not have the skills for the post of head lad. The witness did not recall asking him to consider working at the centre fulltime or taking up residence there.

In early June and again in July the respondents received a list of outstanding items from the claimant in which he sought payments or compensation. While a modest payment was made to the claimant regarding his termination of employment the witness regarded the demands on that list as not appropriate for the respondents. However, the witness accepted that certain procedures and contacts were “overlooked “ when dealing with the claimant.

The witness was re-called on the third day of the hearing. He stated that two Ukraine riders were recruited through an agency in September/October 2006. This agency certified that they were trained. Therefore there was no requirement for the claimant to give them extra training. They were trained by qualified trainers who were acceptable to the turf club. The claimant did not have serious falls and he could not recall him missing days at work or a doctor’s note being sent in. Neither was there a note in the injury book and the claimant would have seen this book. There were no falls of notability amongst the other riders and he stated that railings were not necessary and there have not been any complaints since the claimant left. After the claimant left other horses were purchased that summer.

### **Claimant’s Case**

The claimant expressed concern as to the identity of his employer. That situation was compounded by the fact that he was never issued with written terms and conditions of his employment. The claimant gave details of his work experience (particularly with horses) and his academic qualifications prior to his commencement with the respondent. In February 2006 he responded to an advertisement in *The Irish Field* seeking work riders for the Wicklow area. That advertisement also quoted a phone number for further details. As a result of an interview, references and a brief display of his horsemanship the claimant was offered and accepted employment at this centre located some

five kilometres west of Ashford, county Wicklow. While he accepted, an agreement was reached that he would work on a part-time basis. The witness felt he was a fulltime work rider at the centre. This was the area in which he met and interacted with its manger.

As a work rider the claimant spent most of his time in the racing yard training and preparing horses for races. He formed the impression that the respondents were delighted with his work after three months. The claimant undertook other tasks there and felt very involved in this enterprise. Due to a planned expansion in the respondents' activities more employees were recruited including two riders from the Ukraine. The witness was involved in their training and generally mentored and tutored them. He voiced his misgivings about their safety and the general welfare of the racing yard to the manager on several occasions. The claimant had an unusually high number of falls from the increasing number of horses at the yard. The manager was aware of those falls but no injury book was ever brought to his attention. During that time he considered himself better at his job in many aspects compared to his colleagues. He also secured a point-to-point licence during that time which he described as very preferential.

The claimant was re-called on the third day of hearing. In relation to the injury book he stated that there was no mention of it and the first he heard of it was at the first day of this hearing on 10<sup>th</sup> April. The injury book shown to the Tribunal had nothing to do with his area of work. He outlined falls by another rider and injuries which he himself sustained and verified in a letter to the respondent his receiving medical treatment. On 5<sup>th</sup> April 2007 the claimant was told that the horses were getting a break and there would be no more riding for six weeks. The following day he told the respondent that he would use that break to get surgery on his shoulders and if he was not back for the date in June he would work in the office in Devils Glen. He worked until 13<sup>th</sup> April 2007 and kept in contact with the respondent during the six week period through phone and text messages. On 10<sup>th</sup> May he left a message to have the general manager call him and that he could do lighter work. This call was not returned. On 29<sup>th</sup> May 2007 he received a voice message from the respondent stating that he had to take on someone more experienced and there was a reference to the 24<sup>th</sup> July. He took this to mean that he was being let go as he could not be back until July and they needed a head lad. He did not consider a head lad to be more experienced than he was. He had a telephone conversation with the general manager on 31<sup>st</sup> May and the claimant was asked if he would be okay to get riding elsewhere as the respondent needed the head lad to work on 24<sup>th</sup> July. He was told he would be paid his entitlements including holidays, medical expenses and redundancy.

Reference was made to correspondence where the respondent stated that they could not keep the claimant on unless they bought more horses and in June 2007 horses were bought and the *Irish Field* was referred to. Other horses could also have been bought privately. On 31<sup>st</sup> May the respondent employed somebody else and in the subsequent months others were hired. He did not receive a reference. By letter dated 5<sup>th</sup> July 2007 he received confirmation of his employment being terminated.

### **Determination:**

The Tribunal very carefully considered the evidence adduced, statements made and documents put forward during the three day hearing. Having regard to all of the circumstances, the members of the Tribunal unanimously find that a dismissal did occur and that it was unfair. Therefore the Tribunal awards the sum of € 7,095 under the Unfair Dismissals Acts 1977 to 2001.

In addition loss having been established the Tribunal awards the claimant the sum of €275.00 (this being one week's gross pay) under the Minimum Notice and Terms of Employment Acts, 1973 to

2001.

The claim under the Organisation of Working Time Act, 1997 fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)