

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
Employee

CASE NO:  
UD585/2008  
MN523/2008

against  
Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P O'Leary BL

Members: Mr R Murphy  
Mr O Nulty

heard this claim at Trim on 23rd October 2008

Representation:

Claimant: In person

Respondent: Mr Daniel Coyle BL, instructed by:  
Traynor & Company, Solicitors,  
86 Clanbrassil Street, Dundalk, Co Louth

The determination of the Tribunal was as follows:

Claimant's Case:

The claimant began work with the respondent company in June 2006 as a fitter on a rate of €20.00 per hour. He initially worked in the workshop but then moved to the quarry repairing machines and welding. The claimant's normal hours were 40 hours a week from 8.00am to 4.30pm, however he usually worked 12-hour shifts over six days. There was no written contract of employment. Hours were logged by the claimant filling up a sheet and handing it to the foreman for signing and forwarding to the office. No payslips were issued. Towards the end of 2007 a new clocking system was introduced, which the claimant complied with.

The claimant believed that on occasion he was left short on his wages. Approximately ten days before Christmas he asked in the office about his wages, but was told to speak to the Managing Director (MD) of the company. The claimant tried to contact MD on his mobile phone several times over the following week, but MD didn't answer. He asked the site foreman on 21<sup>st</sup> December to tell MD that he wanted to speak to him, but MD didn't come to see him.

On 21<sup>st</sup> December the claimant went to the office to clock out before leaving for the Christmas

holidays. The Quarry Manager (QM) asked him to leave his mobile phone so that it could be updated for the following year, but he had left it at home as the battery was flat. This was fine and he could drop it in after Christmas. QM then told him to leave the company van as MD's brother wanted to use it over the holidays. The claimant had taken the van home on previous holidays and took it home in the evenings. The claimant said he'd take it home so that he could unload his tools. He was getting 'hot-headed' at this point. He went to MD's brother to ask him about it and was told it was MD who wanted the van. The claimant went home and took his tools out of the van but did not return it.

The following day his wife told him that an employee of the company had called to the house to collect the van. The claimant phoned the Quarry Foreman (QF) and told him his belief that MD didn't want him back after Christmas and that he was owed wages and holiday pay. Half an hour later he received a phone call from a Garda to say that he had taken the van without consent. He told the Garda that he didn't want the van he just wanted his money. The claimant then believed he had no option but to terminate his employment and contacted QF.

#### Respondent's Case:

There had been no issue with the claimant's work during his employment. MD's brother wanted to use the van over the Christmas holidays and that was why the claimant was asked to leave it at the quarry. MD accepted that the rule of not taking the company van home was never enforced and that the claimant had not been informed of it.

QM asked the claimant on 21<sup>st</sup> December to leave his phone for upgrading, but it wasn't a problem that he didn't have it on him at the time and he could drop it in another time. Later QM told the claimant to leave his van as MD's brother required it over Christmas. She offered to store the claimant's tools in her car over Christmas and drop him home. The claimant seemed anxious and when QM spoke to MD's brother later he said the claimant hadn't approached him. QM informed head office that the claimant had left with the van.

MD made three attempts to recover the van, but the claimant would only have been aware of the third time, when one of his employees spoke to the claimant's wife. MD then phoned the Gardaí. The Garda told MD that there was an issue and that the claimant was leaving and wanted money. On the Sunday MD dropped off another employee to collect the van. MD did not attempt to contact the claimant again.

With regard to hours worked, the old system of the employees handing in a sheet with hours on wasn't satisfactory as they were adding on hours. The foreman signed off on the hours and often reduced the number to what he thought was correct. This was then forwarded to accounts for payment. No payslips were issued. A new clock system was brought towards the end of 2007. MD disputed that the claimant complied immediately with the new system.

#### Determination:

The Tribunal determines that the claimant was unfairly dismissed. The employer acted in a fashion that would give to any employee the impression that they were dismissed. By asking for the vehicle, which the claimant used, without giving an adequate explanation as to the reasons for their request, and also by requesting the repossession of the mobile phone, indicated to the claimant that the employer intended to terminate his contract of employment. In calling the Gardaí and reporting the vehicle as being stolen compounded the situation. In the circumstances the claimant

understandably felt that it was the employer's intention to dismiss him. The Tribunal award the claimant the sum of €10,000.00 (ten-thousand euro) in respect of compensation under the legislation, which was the preferred remedy of both parties in the case.

As this was a case of constructive dismissal the Tribunal finds that the claim under Minimum Notice and Terms of Employment Acts, 1973 to 2001 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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