

## **EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM(S) OF:**

Employee

**CASE NO.**

RP479/2007

UD898/2007

MN706/2007

WT302/2007

against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001  
ORGANISATION OF WORKING TIME ACT, 1997  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003  
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr. D. Morrison  
Mr G. Hunter

heard this claim at Letterkenny on 8th July 2008  
and 21st October 2008

**Representation:**

Claimant(s) : XXXX

Respondent(s) : In person

The determination of the Tribunal was as follows:-

At the outset the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and the Organisation of Working Time Act, 1997 were withdrawn.

**Respondent's Case:**

The owner of the company gave evidence. He stated that the claimant had been employed as a general labourer on July 25<sup>th</sup> 2005. At the time there were approximately forty staff.

The claimant's work was slow and there was a language barrier, which was difficult. He pretended not to understand what he was asked to do and would not learn the English language. Translations had to be made. The witness said that he had not dealt with the claimant day-to-day. He could not

remember if he had reprimanded the claimant but may have asked when he was going to learn English.

There was a downturn in business in 2006 and staff came and went. The witness told the Tribunal that staff had complained of working with the claimant. He would do the opposite of what he was told to do and was constantly hard to find. Wages were high in all sections of the company and he discussed the matter with his foremen. He spoke to the claimant's foreman who informed him that the claimant was a good worker but that other staff did not get on with him.

He told the Tribunal that he had to reduce the wages bill and the weakest staff had to go. When asked he said that he could not remember how many staff were let go. He did not discuss the matter with the claimant beforehand. He met the claimant and told him that he had no more work for him. The claimant looked blankly at him and he asked one of the other Polish employees to explain it to him. He stated that he just mentioned the downturn in business and not any disciplinary issues.

When asked he said that he had offered the claimant language classes, as he knew someone who was setting up a course in the area, the claimant just shrugged his shoulders.

When asked by the Tribunal the witness stated that, at the time, he was the Managing Director of the company. He stated that the claimant had not had a contract of employment but had received payslips. He explained that the staff numbers had decreased to twenty-five. Other staff had been let go. When asked what the criteria for letting go was he replied that communication was essential and the least useful were let go. There was no LIFO (last in first out) system in place. He did not think anyone was taken on after the claimant was let go.

On cross-examination he said he did not know why the claimant had not been informed other employees had problems with him.

An employee gave evidence on behalf of the respondent. He started the same day as the claimant. He had no problem communicating with the claimant. He heard other Irish employees complain about the claimant. The foreman would ask him where the claimant was constantly. The witness was asked to explain to the claimant that there was no more work for him. He did not know if the claimant had understood before that he was being let go.

When asked by the Tribunal the witness said that he had spoke to the claimant about learning English and had been told he would do it later. He said it had been hard to locate the claimant at times.

### **Claimant's Case:**

The claimant gave evidence. He stated that he had arrived in Ireland a week before he had commenced work with the respondent in July 2005.

A friend brought him to meet the respondent's owner who helped then to get a house. He started work as an upholsterer. He knew how to do the work as he had had a similar business in Poland. When asked, he said that he had been hired as an upholsterer but had to do other duties. He did what he was told. On one occasion he was working on a chair and was told to perform another task. When he returned to his original work he was criticised for not completing it. When asked if he complained to management he replied that he just did his work.

His Polish colleague informed him that there was no more work for him. He took his planned leave and on his return received his papers from the company.

On cross-examination he stated that he had said that he might have a problem learning English at his age. He said that he never performed opposite duties to what he was asked. The claimant gave evidence of loss.

**Determination:**

Having heard the evidence adduced by both parties in the case the Tribunal finds that the respondent had been procedurally unfair in dismissing the claimant. Accordingly the Tribunal awards the claimant the sum of € 8,304-00 under the Unfair Dismissals Acts, 1977 to 2001.

The claim under the Redundancy Payments Acts, 1967 to 2003 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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