

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

Employee

MN496/2008

against

Employer

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. Hurley

Members: Mr. M. Forde  
Mr. T. Kennelly

heard this claim at Killarney on 20th November 2008

#### **Representation:**

Appellant(s): Mr. Con Casey, SIPTU, Connolly Hall, Upper Rock Street, Tralee.  
Co. Kerry

Respondent(s): Ms. Eliza Coghlan B.L. instructed by Ms. Bridget Reidy, Kelliher Coghlan,  
Solicitors, Castleisland, Co. Kerry

The decision of the Tribunal was as follows:-

#### **Preliminary issue:**

By way of preliminary enquiry, the Tribunal satisfied itself by questions to the representatives for the appellant and respondent that a claim for minimum notice was not, at the date of this Tribunal hearing, before the rights commissioners for adjudication.

#### **Appellant's case:**

The appellant's evidence was that he commenced employment with the respondent on 22 October 2007. Letter dated 18 April 2008 dismissed the appellant dismissed for gross insubordination. He received this letter from the respondent by hand on 21 April 2008 and in the post on 23 April 2008. In same, the claimant was given one months notice of the termination of his employment. However, after just a day and a half, on 23 April, the appellant was dismissed and his employment

was terminated.

In cross-examination, the appellant denied that the letter dated 18 April terminating his employment had been received by him on 18 April – *the same day that the letter was dated* – but maintained that he had received it by hand on 21 April and possibly the next day by post. On 23 April, having contacted the respondent by text message for payment of outstanding wages and due to their failure to pay him, he refused to transport a load of product from the mill. Because of this refusal, the respondent dismissed him on that day for gross insubordination.

Replying to the Tribunal, it was confirmed that the appellant had not received terms and conditions of employment.

### **Respondent's case:**

In her sworn evidence, the respondent said that from her recollection, she handed the letter of 18 April to the appellant on the 18 April. She posted the letter to him on the same day by registered post.

In cross-examination, the respondent maintained that she gave the appellant €60.00 in cash on 18 April, in respect of a fine for road tax. The appellant signed a receipt dated 18 April, for the €60.00. (*A copy of this receipt and all documentation referred to was opened to the Tribunal*).

The appellant maintained that to the best of her memory, she gave the appellant the €60.00 and the letter of 18 April at the same time. She had driven to the claimant's home on the 18 April to give him the €60.00 so it would make sense that she would also have given him the letter of 18 April at that time.

### **Legal argument:**

The appellant's representative maintained that there was a contractual obligation on the respondent to pay the appellant one month's notice in lieu of service. The respondent had accepted that the appellant had been their employee. He had been a full-time employee, employed on a back-to-work scheme, which envisaged the duration of employment as greater than two years.

The letter of 18 April 2008 had terminated the appellant's employment with one month's notice. The appellant's representative contended that this letter had conferred a contractual notice on the appellant of one month and he was entitled to this rather than the statutory notice of one week. Because notice of one month was stated in this letter, it was superior to the statutory one week.

The claimant's representative maintained that the Tribunal was empowered to award the appellant the contractual one month's notice where such a contractual obligation exists. In the absence of terms and conditions of employment, the letter of 18 April applies the one month's contractual notice. By virtue of the fact that the appellant had been willing to work out his month's notice but had not been allowed to do so, he was entitled to a month's payment in lieu of that notice.

The respondent's representative maintained that only the statutory notice provisions applied in this case. The claim was being prosecuted under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 which only deals with statutory entitlements. The statutory notice entitlement to the termination of the appellant's employment was one week and he had received same. A month's notice was not a term of the appellant's employment and even if it was, a dispute in relation to same

is properly the remit of the courts.

The Tribunal's powers are statutory. It cannot go outside the ambit of the Minimum Notice and Terms of Employment Acts, 1973 to 2001. In a negotiated settlement between parties, a specific notice period may be mentioned which is greater than the statutory entitlement but the Tribunal has no power to make a finding in such a regard.

**Determination:**

The jurisdiction of the Employment Appeals Tribunal to hear and determine this case is governed by the provisions of Minimum Notice and Terms of Employment Acts, 1973 to 2001 and not by contractual arrangements between parties. A dispute as to any contractual entitlement to a notice period is justiciable by the courts and is not a matter for the Tribunal.

Having carefully considered the evidence and submissions adduced, the Tribunal unanimously finds that the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, succeeds and accordingly the appellant is entitled to the statutory entitlement under the Act of one week's pay in lieu of notice in the sum of €650.00, being the equivalent of one week's pay.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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