

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

CASE NO.

MN767/2008
UD833/2008

Against

Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr D. Moore
Ms. E. Brezina

heard this claim at Dublin on 28th November 2008.

Representation:

Claimant: Ms. Christina Geraghty B.L., instructed by Damien Maguire & Co, Solicitors, J2
Maynooth Business Campus, Maynooth, County Kildare

Respondent: In person.

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant gave evidence. He commenced work with the respondent on 18th July 2006. He was employed as a Window Fitter. He worked mostly in Dublin and enjoyed his work.

On 7th December 2007 the claimant asked the respondent if he could receive his wages and holiday pay early and permission to go on holidays on 14th December 2007. This was agreed. He returned to his home in Lithuania the following day, 15th December 2007. He was due back to work on 7th January 2008.

The claimant did not return to Ireland until 9th January but made several phone calls to his boss from 2nd January 2008 onwards to explain that he would not be able to return on 7th January but was unable to contact him. His boss telephoned him 4/5 days later and said there was no work for him

for at least a week and said he would contact the claimant when work became available. After that week expired the claimant tried several times to contact his boss again. He then received a call from his boss asking him to wait another two weeks. When he did not hear from his boss he called to his house at the end of January 2008. He wanted to know why there was no work available for him. His boss told him that he would be straight with him. Some employees worked for less money than he did and said he could not offer the claimant a job. The boss asked him to wait for another month but asked the claimant to look for work elsewhere. The claimant's understanding at this stage was that he no longer had a job with the respondent. He received his P45 at the beginning of February 2008.

The claimant had never received warnings about his absenteeism. He was never asked for medical certificates to explain some of his longer absences from work.

The claimant told the Tribunal that he had booked his Christmas flight home at the end of November 2007. A medical appointment prevented the claimant returning to work on 7th January 2008. He telephoned the respondent from Lithuania explaining this.

The claimant was in receipt of a social welfare payment of €200.00 per week from 1st February 2008 to end August 2008. He secured work on 1st September 2008.

Respondent's Case:

A driver in the respondent company gave evidence. The witness had worked with the claimant. The claimant had told him that he was returning home early to Lithuania for Christmas.

Shortly after 6 o'clock on the morning of 17th December 2007 the witness travelled to the usual pick up point to collect the claimant. He was not there. He telephoned the claimant but got no reply. He then called to the claimant's house. The claimant was not there. The witness rang the respondent to say that the claimant was not at home. The witness worked until 22nd December 2007, when the company closed for Christmas holidays, and returned to work on 7th January 2008.

A director of the company gave evidence. The claimant reported to him. The Director contended that he had never given permission to the claimant to go on holidays on 14th December 2007. He had given the claimant his wages and holiday pay in advance of the Christmas holidays because the claimant wanted to buy Christmas presents. The Director's understanding was that the claimant would finish work on 22nd December 2007. The company was extremely busy coming up to Christmas. The Director went abroad on holidays on 18th December 2007 and left instructions with his partner. He expected the claimant to return to work on 7th January 2008.

The Director returned from Christmas holidays on 13th January 2008. During his absence from work no voice messages had been left on his mobile phone from the claimant. He telephoned the claimant on 14th January 2008 and indicated that he had work for him. The claimant said he would come to work the following day.

The respondent contended that he had never dismissed the claimant but that he never returned to work. The Director said he washed his hands of him. The claimant was given every opportunity to return to work but chose not to. The claimant was then replaced in his job.

The Director told the Tribunal that the company had no disciplinary or grievance procedures in

place within the company during the period the claimant worked there but are now putting such procedures in place.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. It is clear to the Tribunal that there was a conflict of evidence between the parties. The claimant believed he was dismissed at the end of January 2008 when he called to the respondent's house and was told to seek work elsewhere. No proper procedure was used to effect the dismissal and the claimant was given no opportunity to appeal the decision. The Tribunal finds that the claimant was unfairly dismissed. However, it is also clear from the evidence that the claimant did by his actions contribute significantly to the situation that arose. The Tribunal awards the claimant €3,000.00 under the Unfair Dismissals Acts, 1977 to 2001. The Tribunal also awards the claimant €722.34 being the equivalent of one week's pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)