

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.
UD964/2008
MN905/2008
WT401/2008

against

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. P. O'Leary B.L.

Members: Mr. A. O'Mara
Mr. C. Ryan

heard this claim at Dublin on 2nd January 2009

Representation:

Claimant(s): Mr. Michael MacNamee B.L. instructed by Ms. Ciara Sharkey, Orpen
Franks, Solicitors, 28 & 30 Burlington Road, Dublin 4

Respondent(s): No appearance or representation

The determination of the Tribunal was as follows:-

Claimant's case:

In sworn evidence, the claimant confirmed that his employment commenced in April 2007 and was terminated on 23 June 2008. He never received payslips or terms and conditions of employment from the respondent. The claimant paid himself €500.00 per week from the cash register, which was done on the instructions of the respondent.

While on holidays, the claimant received a telephone call telling him not to come back to his job. When he called to the shop the next day, he was offered part-time work but the following day, he receive another telephone call, again telling him not to return.

The claimant established his loss for the Tribunal. He called to shops and registered with FÁS but despite his efforts, he failed to secure alternative employment. The claimant now has plans to go to

college and study photography.

Replying to the Tribunal, the claimant confirmed the he had called to all small shops in the city centre in an effort to secure alternative employment. (*A list of the establishments that the claimant visited was opened to the Tribunal*).

The claimant had been employed in a retail shop and others were also employed there. He had stayed back at night to do the shop accounts and to prepare the cash float for the following day. Everyone in the shop had known that he was going on holidays. He had told his colleagues and he had made his request for same on the roster.

The claimant assumed that the respondent was paying PAYE and PRSI for him as he – the respondent – had been given all of the necessary details to do so.

Determination:

The Tribunal was satisfied that the respondent had been duly notified of the hearing. However, there was no appearance by them or on their behalf.

On the uncontroverted evidence of the claimant, the Tribunal finds that the claimant was unfairly dismissed. The reason for finding that he was unfairly dismissed was that he was dismissed by way of a telephone call while on holidays. No reason was given to the claimant for his dismissal at the time or thereafter.

The Tribunal deems that the most appropriate remedy in the circumstances is compensation. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2001 succeeds and the Tribunal assess the claimant's financial loss as €13,000.00

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

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)