

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

2 Employees

MN430/2008

MN431/2008

against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms S. Behan

Members: Mr D. Hegarty
Ms H. Kelleher

heard this claim at Cork on 24th November 2008

Representation:

Claimants: Lillian O'Sullivan & Co, Solicitors, 47 Welwyn Road,
Maryborough Woods, Douglas, Cork

Respondent: In person

The decision of the Tribunal was as follows:

Claimants' case:

The first named claimant gave evidence that he started work for the respondent in March 2003. He made a decision to leave the company because he felt unappreciated and wanted to start his own business. He said that he notified TS of his intention to leave on 20 February 2008 and told him that JP was joining him. TS met him the next day, and also the day after, where along with SO'B they tried to persuade him to stay on. He sent an e-mail to TS with his resignation attached on the following Monday.

He said that it was in his contract of employment that he would have to give 4 weeks notice if he was leaving. He understood that he would have to work for those 4 weeks or be paid in lieu of them. He said that he started his new business almost immediately after leaving.

He denied that he had spoken to TS in late January about the possibility of leaving to start his own business.

The second named claimant gave evidence that he started work on 21 February 2007. He said that he never told TS in late January that he was leaving. He said MB asked him to join him in leaving and starting a new business, and then they told TS this on 20 February 2008. He said that they drafted the resignation letter after the meeting with SO'B and TS on 21 February 2008, and sent it in attached to an e-mail on 22 February 2008. He understood that he would have to work for the 4 weeks notice required of his contract or be paid in lieu of them.

Respondent's case:

SO'B (Director of the company) gave evidence that she felt that notice had been informally given on 29 January 2008 and not late February. She said that she had been told this by TS. She felt that the claimants had taken advantage of the situation and had abused the company's trust. She admitted that she had no evidence with her of notice being issued earlier than the end of February 2008. She accepted that written notice was received from the claimants on 25 February 2008.

Determination:

The jurisdiction of the Tribunal is governed by the provisions of the Minimum Notice and Terms of Employment Acts, 1973 to 2001. Their decision overrides any contractual arrangements made between the parties.

It is accepted by the respondent that written notice was received from the claimants on 25 February 2008.

Therefore, based on the evidence adduced, the Tribunal awards the first named claimant €2,558.80 (being the equivalent of 2 weeks gross pay) under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

The Tribunal awards the second named claimant €961.54 (being the equivalent of 1 weeks gross 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)

