

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

MN712/2008

against

2 Employers

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Flanagan BL

Members: Mr J Hennessy
Ms M Mulcahy

heard this claim at Carlow on 24th November 2008

Representation:

Claimants :

In person

Respondent :

Ms Michelle Tracey, O'Flaherty & Browne, Solicitors, Greenville,
Athy Road, Carlow

The decision of the Tribunal was as follows: -

Appellant's case:

The appellant commenced his employment with the respondent in October 2007. He was on holidays and was due back on 9th July 2008 however due to difficulties with his flight he did not

return until 14th July 2008. He did not receive payslips. He was on lay-off from 24th March to 16th April 2008 when he was signing on for three days and working for three. He was laid off on 9th July 2008 and was paid up to this date.

Respondent's case:

The respondent was not present at the hearing however their representative appeared before the Tribunal and stated that the respondent thought that the case was listed for the following day. A net weekly wage was given but not the gross. The representative had a health and safety induction document but did not have disciplinary procedures on behalf of the respondent. She stated that the appellant was dismissed on 14th February 2008 and was taken back three days later. There was a further break in service due to lay off from 24th March to 16th April 2008. The appellant was dismissed on 9th July 2008 as the contract came to an end because of the appellant's conduct therefore the appellant was not entitled to receive one weeks notice.

Determination:

The respondent did not attend the hearing in person but was represented by a solicitor. The Tribunal considered giving the respondent an opportunity to return on another date but the outline of the respondent's case did not disclose a valid defence or relevant controversy as to fact such that the Tribunal is satisfied that giving the matter a further date was undeserved. The Tribunal does not accept the excuse for non-appearance by any witness for the respondent was *bona fide*.

The solicitor for the respondent stated that the employer was a partnership and the Tribunal amends the Form T1A accordingly.

The Tribunal notes with distaste the attempt of the respondent to smear the reputation of the appellant. It was contended that the appellant had his employment terminated without a hearing on the day the job ended because his alleged misconduct had caused the contract to be lost such that he was not entitled to notice. The solicitor was careful not to specify whether the appellant was dismissed or made redundant despite being invited to do so by the Tribunal. In any event the respondent had no witnesses present and the Tribunal is satisfied that the solicitor for the respondent was sent by the respondent to spin a story to which the respondent was unwilling to swear. The Tribunal does not imply any lack of probity on behalf of the solicitor for the respondent who was doing her best with her clients instructions, such as they were.

The Tribunal deems service to be continuous.

Section 8 of the Unfair Dismissals Act 1977 [No. 10/1977] as amended provides that where a term or condition of the contract of employment contravenes any provision of the Income Tax Acts the Tribunal shall notify the Revenue Commissioners as appropriate. According to the P45 for the appellant his net weekly remuneration appeared to be €552 net per week but he stated that he was always was paid €600 net per week.

The Tribunal estimates that the gross weekly wage of the appellant was €675. The lay off period was less than twenty-six weeks and the appellant had thirteen weeks continuous service therefore

the Tribunal awards €675 which is the equivalent of one weeks notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)