

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

Employee

WT257/2008  
UD941/2007

against

Employer

under

**ORGANISATION OF WORKING TIME ACT, 1997  
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms S. Behan

Members: Mr J. Killian  
Mr J. McDonnell

heard this claim at Cork on 9th June 2008

Representation:

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Claimant :

Mr Donal O'Sullivan, B.L., instructed by David J O'Meara & Sons, Solicitors,  
Bank Place, Mallow, Co Cork

Respondent :

XXXX

The determination of the Tribunal was as follows:-

The fact of dismissal was in dispute in this case

At the outset the respondent consented to adding on a claim under the Organisation of Working Time Act, 1997.

**Claimant's case:**

The claimant began working for the respondent who is also his uncle, in September 2003. The respondent's business was in the fitting of gutters, fascia and soffits. There were no problems for the first three months however after this initial period he had to lift heavy weights in the region of upto 180kg and sometimes he had to work on his own. He had to lift rolls of aluminium

coils from a delivery truck onto the respondent's hiace van. He put his back out lifting these coils and pushing them up a ladder. This lifting had to be done on average six times a week. The claimant injured his back in October 2006 but continued to work as he knew he would not get paid if he took time off. The respondent also injured his back lifting these coils. He told the respondent the coils were heavy and he asked him to get a truck with a mechanical arm to facilitate the lifting of the coils but he did not do so. He brought his concerns to the respondent's attention once or twice a week. He was not sent on safety courses and did not have safety boots, gloves or harness. While there was scaffolding on building sites, the scaffolding was unsafe on one particular job and he was close to having a fall. That building was subsequently closed by the HSE for a few weeks. He did high jobs himself without having a colleague holding the ladder. There should have been someone working with the claimant if the respondent himself was not there. The claimant was angry and felt he was being used. As far as he was concerned the respondent did not care about his safety. He got no response when he complained to the respondent. The claimant said it was not safe to have the coils in the van or to change a coil in the van.

The claimant also told the Tribunal about injuries he sustained during his employment with the respondent. His right index finger was injured while he was working on guttering. He left his employment in May 2007 as he could not continue working in an unsafe environment. The claimant suffered from depression and he believed that the depression was as a result from his treatment by the respondent. He has been out of work since leaving the respondent and is claiming disability benefit.

In cross-examination witness said the respondent refused to complete the form for Social Welfare payments. The health and safety course was arranged for a Saturday but this was his day off and there was no arrangement for payment other than the course fee being paid. He denied that he walked off the job in September 2006 and he did not report the accident at that time.

In answer to questions from Tribunal members witness said that it took a while for him to realise that the work was dangerous. He also worked for the respondent when he was about twelve years old. He did not wear gloves, as it was difficult to pick up small nails while wearing them. The respondent himself did not wear gloves either. The reason he walked off the site in May 2007 was for his own safety.

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

The respondent has been in the pvc business for seventeen years and has never been before this Tribunal prior to this case. No other company in this business has an arm to lift the gutters. He works in conjunction with builders and contractors. The business is a two-man outfit. He gave the claimant, who is his nephew, a start in life and gave him a site for his house. Regarding the claimant's working hours he was picked up at 8.30am each day and he was home by 3.30pm. The claimant mentioned weights of up to 160/170 kg which he states he lifted twice or three times a week but it was more like once per month. One person could not lift this weight on his own. The most that could be lifted by one person would be 14lbs. The claimant never loaded the coils from the delivery van to respondent's van. Steel vests were worn on the sites and he was tired of telling the claimant to wear his yellow vest. The safety equipment is required by law. Witness has worked seventeen years in this industry and has no injuries as a result of this business. He had a back problem in his younger years and had an operation in 2006.

The claimant walked off the job in 2006 and returned later. When he walked off the job in 2007 he assumed he would be back the following Monday. He looked after the claimant and was a

oodboss him. The reason the claimant left in 2007 was that he wanted more money. He said he could get a job for €100 more per week but witness could not match that increase in wages. On the day he left, 25<sup>th</sup> May 2007 he said he would not see witness the next day and he took his tools from the van. There was no indication that he was unhappy. There was no problem with the claimant's timekeeping and his work was ok. He has never issued contracts and has no system of warnings. The claimant returned three weeks after leaving and asked witness to sign a form but he did not do so.

In cross-examination witness said that there was no need to send the claimant on a weight lifting course as one has to have a safe pass to come on to the site. Saturday was the only day that he could get places on the safety course. He was not paid wages to attend the Health & Safety course on a Saturday but it was in his own interest to attend. Two of his sons work with him part-time in the business. Witness loaded the coils himself with his sons.

**Determination:**

Having heard the evidence, the Tribunal is satisfied that the reason the claimant left his employment in May 2007 was because of his concerns that he was working in an unsafe environment, and in circumstances where his complaints to the respondent in this regard were unheeded.

The Tribunal is satisfied that the claimant was constructively dismissed. It is noted that the claimant is in receipt of disability benefit, but the Tribunal is of the opinion that, having regard to all of the circumstances, and in particular the actions of the employer with regard to the work environment in which the claimant was employed, it would be just and equitable to make an award in favour of the claimant in the sum of €1,762.20, being four weeks wages, pursuant to the Unfair Dismissals Act 1977 to 2001.

The Tribunal also makes an award of €861.14, being two weeks pay, under the Organisation of Working Time Act 1997.

Accordingly, the Tribunal therefore makes a total award of €2623.34

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

