

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD1146/2008

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. E. Murray

Members: Mr. M. Forde
Mr. J. McDonnell

heard this claim in Clonmel on 7 January 2009

Representation:

Claimant(s) :

Ms Noreen Carroll, Tipperary Citizens Information Centre,
Community Centre, St. Michaels Street, Tipperary Town, Co.
Tipperary

Respondent(s) :

No attendance or representation

The determination of the Tribunal was as follows:-

This claim came before the Tribunal on the 7th of January 2009. There was no appearance by or on behalf of the respondents. Evidence was given on behalf of the claimant who said that he was employed as a van driver by the respondents on the 1st of November 2006. He attended an interview with the first named respondent and commenced work with them and continued working with them until the 9th of May 2008.

He gave evidence that during that time he had repeated difficulties getting paid. He described how his very first pay cheque bounced and how subsequent cheques also bounced. He said that between December 07 and May 08 there were regular problems with payment of his wages. His employers would make excuses and would ultimately lodge his wages or part of them but he had constant problems in this regard.

He also had to buy diesel for his van with his employer's credit card and he had several embarrassing experiences with the credit card as payment wasn't authorised. Ultimately he felt that he could no longer continue in the current situation he was in and tendered his resignation and now claims as having been constructively dismissed.

His wage was €450.00 per week and he was unemployed for 9 weeks before resuming work.

Determination.

The Tribunal finds that the employers in this case were Killian McNay and Canice McNay trading as McNay Brothers.

The Tribunal finds that the conduct of the respondent in this case with regard to financial issues justified the claimant in resigning his position on the 9th of May 2008. The Tribunal finds that the claimant acted reasonably in doing so and upholds the claimant's application for relief under the Unfair Dismissal Acts and finds that this was a case of constructive dismissal.

The claimant was out of work for a period of 9 weeks before resuming work and lost a total of €4050.00 during that period.

Under the Unfair Dismissals Acts, 1977 to 2001, the Tribunal consequently makes an award in favour of the claimant in this matter in the sum of €4050.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)