

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee

RP197/2008

WT118/2008

MN229/2008

against

Employer

under

### **MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 ORGANISATION OF WORKING TIME ACT, 1997 REDUNDANCY PAYMENTS ACTS, 1967 TO 2003**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. L. Ó' Catháin

Members: Mr. P. Casey  
Mr. D. McEvoy

heard this appeal at Cork on 18th September 2008

#### **Representation:**

Appellant: In person

Respondent: Ms. Maire O'Sullivan, Thomas Coughlan & Co., Solicitors, Park House,  
3 Tuckey Street, Cork.

The decision of the Tribunal was as follows:

#### **Claimant's case:**

The claimant gave evidence that he didn't get any message from the respondent for a week after 11 February 2008. He said that he got work for one day in Rochestown, but was not told where he was going next. He was told at ten o'clock in the morning that he had to be at a venue sixty miles away by 1 p.m. but he couldn't do it because he had no transport, and his employer knew this. In addition, he had no credit on his phone so he couldn't phone or text him. The respondent made a call to his workmate saying that he had work for him (the claimant).

He said that he texted the respondent a few days after 12 February 2008 asking him what was going on and also asked for his P60 and P45, which he received at a later date. He denied that he had

threatened to leave his job and that he frequently failed to turn up for work.

The claimant's wife (KV) gave evidence that the claimant never had any transport of his own and that the respondent knew this. The claimant told her that he had an argument with the respondent on 13 September 2007, and she told him to apologise in case he lost his job. On being asked why the claimant didn't contact the respondent for three days after not turning up, she said that he had asked the respondent what was going on. She said that there is also an obligation on the employer to check why his employee does not turn up for work. The employer said that the claimant had quit the job, but the claimant thought he had been fired.

**Respondent's case:**

The respondent gave evidence that the claimant was unhappy in his job and had asked for another finisher to help him. He said that on 13 September 2007 the claimant said to him that it was his last day in the job. The following day the claimant apologised to him and asked to continue working, so he took him back on. He told the claimant that he had to be in Cahir the next day, and the claimant didn't tell him that he couldn't travel there. If he had known that the claimant had no transport, he could have provided it. He had to do the work himself in the claimant's absence.

He said that he interpreted the claimant's text of 12 February 2008 to signify that he had resigned. The claimant was not entitled to redundancy because he had resigned in September 2007, and then again in February 2008. He said that the company had ceased trading, and that he himself was on social welfare.

**Determination:**

Having considered all the evidence, the Tribunal accepts that there was no break in service, and therefore the appeal is validly brought before the Tribunal.

It is the view of the Tribunal that the appellant had not taken sufficient steps to establish the status of his employment. The evidence presented to the Tribunal did not establish to their satisfaction that there was a redundancy in this case.

Therefore, the appeal under Redundancy Payments Acts, 1967 to 2003, fails.

In addition, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, fails.

No award is made under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)

