

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
Employee- claimant

CASE NO.
UD990/2008
WT406/2008

against
Employer - respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs M Quinlan

Members: Mr P Pierson
Mr P Clarke

heard this claim at Roscommon on 15th January 2009

Representation:

Claimant: In person

Respondent: In person

The determination of the Tribunal was as follows:

Claimant's Case:

At the outset of the hearing the claimant withdrew the claim submitted under the Organisation Of Working Time Act, 1997.

The claimant was employed on a part-time basis by the respondent company, as a garage store-man and forecourt attendant, from 2004 until he left his employment on Friday 29th February 2008. The claimant's Sunday hours were cut, without notice, when a new manager took over in 2007, leaving the claimant with two days per week. When he left, in 2008, the claimant worked either one or two days per week, including Friday. The manager told him his hours were cut due to company policy.

The claimant left his employment on a Friday, which was the busiest day of the week. The claimant contended that the manager did not arrive until 2.30pm that day. The claimant had to unload pallets of stock and there was a carwash promotion at that time. The carwash kept breaking down and the claimant repeatedly had to fix it, including during his dinner break. On one occasion, he couldn't fix the machine and went to the manager, who told him to fix it, he repeated that he couldn't and then the manager became agitated and abusive.

The claimant returned to the storeroom. The manager then came to the storeroom and was verbally abusive to the claimant telling him that if he hired a person he expected that person to do what he employed him for, and, that the claimant was 'no f**king man at all'. The claimant asked for his holiday pay, for days that had been refused to him, and complained that he was only on minimum wage and was expected to do two days work in one. The claimant became frightened and left; he didn't return. He phoned over the weekend to find out his hours for the following week, but he his name was not on the roster. The claimant received his P45 two days later. He wrote to the human resources section two weeks later but received nothing but an acknowledgement.

In general he had a good relationship with the manager, but he took exception to the manager's insults and abusive language on that occasion.

Respondent's Case:

The garage manager, at the time of the claimant's departure, gave evidence for the respondent company. The manager could not recall exactly what time he arrived at the garage on the day the claimant left. It was very busy and the car wash needed to be reset several times. Three customers had complained about it and the manager had reset the machine. On the fourth occasion the manager asked the claimant to do it, but he refused. The claimant asked for his holiday pay.

The manager disputed that there was any confrontation or that voices were raised. The manager went out and when he returned the claimant was gone. On previous occasions the claimant had left the garage during work hours to buy cattle. The manager had spoken to the claimant about this and it had not reoccurred in the last few months. The manager believed he had a good relationship with the claimant and he had discussed with the claimant why he had to reduce his hours.

The manager was told that the claimant had phoned to find out what his hours were, but he had not put him on the roster, as he did not know if he would be there. He did not phone the claimant back or attempt to contact him further. He believed that the claimant should have contacted him.

Determination:

Having heard the evidence offered by both parties the Tribunal is of the unanimous view that the evidence furnished by the claimant was not sufficient to sustain a claim of constructive dismissal. Accordingly, the claim under the Unfair Dismissals Acts, 1977 To 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)