

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO.

Employee

MN378/2008

against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony B.L.

Members: Mr J. Hennessy  
Mr D. McEvoy

heard this claim at Waterford on 7th November 2008

Representation:

\_\_\_\_\_

Claimants :  
In person

Respondent :  
XXXX

The decision of the Tribunal was as follows:-

On 6 February 2008 the claimant tendered one week's notice of the termination of her employment to the owner/director of the respondent. The notice was tendered orally. He suggested that he would speak to the other managers and that perhaps she could leave earlier. On discussing her work situation with the other managers he established that they had no outstanding work for completion by her. He then informed the claimant she could leave on 8 February and she agreed to this and left on that day.

Believing that they had reached a mutual agreement that the date of termination of her employment was to be 8 February the respondent paid the claimant up to and including 8 February but did not pay her for 11 and 12 February. In support of his argument the owner/director told the Tribunal that about one month subsequent to her leaving, he found a letter dated 6 February from the claimant in

a cupboard giving him one week's notice from that date. It was the claimant's evidence that she understood that she would be paid for 11 and 12 February and that had she known that she would not be paid, she would have worked those two days. She had mislaid her letter tendering her week's notice but a member of staff told her it was not necessary to give notice in writing.

**Determination:**

Section 5 of the Minimum Notice and Terms of Employment Acts, 1973 to 2001 provides that the provisions of the Second Schedule to the Act shall have effect in relation to the liability of an employer during the period of notice required by the Act whether the notice to terminate is tendered either by the employer or the employee. The Second Schedule provides:

1. Subject to the provisions of this Schedule, an employee shall, during the period of notice, be paid by his employer in accordance with the terms of his contract of employment and shall have the same rights to sick pay or holidays with pay as he would have if notice of termination of his contract of employment had not been given.
2. (a) An employee shall be paid by the employer in respect of any time during his normal working hours when he is ready and willing to work but no work is provided for him by his employer.

Having considered the evidence and these provisions the Tribunal is satisfied that when the claimant tendered her notice she intended to work the full week. When she was told that she could leave on the Friday she did not know that the respondent did not intend paying her for 11 and 12 February and had she know so she would have worked those two days. In the circumstances the Tribunal finds that the claimant was ready and willing to work on both 11 and 12 February. Accordingly, it awards her the sum of €193.20, which is the equivalent of two days' wages, under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

The Tribunal is satisfied that the failure to pay the claimant for those days was due to a misunderstanding between the parties.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

