

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:	CASE NO.
First named claimant Employee	UD338/2007
	MN227/2007
Second named claimant Employee	UD339/2007
	MN228/2007
Third named claimant Employee	UD340/2007 MN229/2007
Fourth named claimant Employee	UD341/2007
Co. Tipperary	MN230/2007
Fifth named claimant Employee	UD342/2007 MN231/2007
Against	
Employer	-respondent
under	

UNFAIR DISMISSALS ACTS, 1977 TO 2001 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley
Members: Mr G. Phelan
Dr. A. Clune

heard this claim at Nenagh on 10th June 2008 and 30th October 2008 and 26th January 2009

Representation:

Claimant: Mr. David Leonard BL instructed by Niall Sheerin,
Niall Sheerin & Co., Solicitors, 17 North King Street, Dublin 7

Respondent: Mr Tom O'Grady, IBEC, IR/HR Executive,
Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

Respondent's Case

The first witness for the respondent gave evidence that he is the plant manager at the XXXX processing plant in XXXX. He has occupied this position since 1999. The company sells beef to supermarkets and exports beef to EU countries. The witness gave evidence that the company had experienced difficulties with staffing levels during the Christmas period in 2005 when a significant number of employees had taken holidays at the same time. The company's slaughter team was particularly depleted during those periods.

Accordingly the company introduced new guidelines to all employees in the summer of 2006 with regard to holiday procedures. All holidays had to be pre-booked with line supervisors and were to be taken in two-week slots. This new procedure was issued to the workforce in September 2006. It was explained to each employee by the line supervisors and notices to this effect were posted up on the notice boards in English and Russian.

Approximately three weeks before Christmas 2006 the claimants requested holidays over the Christmas period. It was explained to them that it was not possible to accede to their request as the claimants had already used up their full holiday entitlements and the slaughter team of which they were part of could not operate with a depleted workforce. The company expected the claimants to report for work on the 2nd January 2007 when the plant reopened.

The witness went on to give evidence that the claimants did not return to the plant on the 2nd January 2007. Two weeks later on the 15th January 2007 the five claimants and another employee arrived at the plant. They were met by the abattoir production manager who asked them to go to the canteen. The company then held a meeting with the six employees. Two shop stewards also attended this meeting. The company sought an explanation as to why the employees had returned to work two weeks late. The claimants provided medical evidence from a Romanian doctor indicating that they were unfit for work. The company doctor did not corroborate this medical evidence and it was felt by the company that the claimants had deliberately taken advantage of the Christmas period and had ignored holiday procedures. The company doctor corroborated medical evidence from the sixth person and this person was given a warning and allowed to return to work.

The witness gave further evidence that the five claimants had a range of different skill levels and that two in particular were essential to the smooth operation of the slaughter line. The company is sympathetic to employees who have to travel home for their holidays but the holiday procedures had been made abundantly clear.

Under cross-examination the witness confirmed that the claimants had been valued workers and that the revised holiday procedures introduced in September 2006 had not been posted up in Romanian, the country of origin of the claimants. He confirmed that the company had considered other sanctions such as warnings and suspensions but the holiday systems had to be respected and if lesser sanctions had been imposed it would have led to the same situations happening every year.

In reply to questioning the witness stated that no decision was made prior to the 15th January 2007

to dismiss the claimants. He confirmed that the employee who returned along with the claimants on the 15th January 2007 had been sick prior to going on holidays and the company doctor corroborated medical evidence produced by this employee. No request was made by the claimants to be referred to the company doctor. It would not have served any useful purpose as the claimants were fit for work when they returned on the 15th January 2007.

The second witness gave evidence that he is employed as the abattoir production manager since the year 2000. Approximately 3 weeks before Christmas 2006 he was approached by the claimants all of whom were seeking holidays over the Christmas period. He informed them that they had already taken their full holiday entitlement. He confirmed that he always communicated with the claimants in English and understood that the claimants had good English as they had been in employment with the company for approximately 5 years.

Under cross-examination he stated that he was unaware of any difficulties experienced by the claimants in receiving bonus payments due to them and did not recall any other employees returning late for work after the Christmas holiday period.

In reply to questioning the witness confirmed that the claimants were seeking unpaid leave during their absence as their holiday entitlement had been used and new temporary employees had been hired in the second week of January because the claimants had not returned to work.

The third witness gave evidence he is an advisor to the AIBP group in relation to Human Resource issues. He was contacted by the plant manager in relation to holiday situation within the group. He confirmed that employees had been allowed to take extended holidays during the summer or Christmas time but this practice was being abused as some employees were taking extended holidays during both of these periods. The plant had been badly affected as a result of this action in 2005 and 2006. He stated that the company applied fair procedures at all times.

Claimants' cases:

The Tribunal heard evidence from the **first named claimant**. He worked for the company for seven years. When the claimant returned from a trip to Romania in 2006 he spoke with his supervisor, Mr. H, and told him that he might have to return to Romania soon, as his father was ill and without someone to care for him. The claimant mentioned taking holidays at Christmas and his supervisor replied "not a problem". In September 2006 the claimant again spoke with his supervisor and told him he would need to return home. This time the supervisor told the claimant "we'll see."

The claimant travelled to Romania at Christmas 2006 and when he returned to work on the 15th January 2007 his supervisor told him and the other claimants they were "finished". The claimant attempted to show the supervisor a medical certificate and other documents he had pertaining to his father's medical situation but his supervisor did not want to see these documents. The claimant was subsequently dismissed from his employment. The claimant gave details to the Tribunal, pertaining to his mitigation of loss.

During cross-examination it was put to the first named claimant that the dates of some of the medical documents related to June 2006. The claimant confirmed this and stated that he wanted the supervisor to be aware that his father had undergone brain surgery. The claimant was asked if he had been told that he could have the time off, the claimant replied that the supervisor had told him "we'll see."

The claimant stated that before this hearing he had not seen the document pertaining to the company's holiday procedure.

The Tribunal heard evidence from the **third named claimant**. He and his wife are from Romania. When he first arrived in Ireland they had no children at the time. His wife was in Romania and he visited. At some time they were expecting a child and in September 2005 their daughter was born. He and his wife discussed matters and decided that she and their daughter would move to Ireland. He spoke with Mr. H of the respondent about them moving over and Mr. H thought that it would be a good idea to bring his family to Ireland.

The witness explained the process and paperwork that was required for the move. Also Romania was in the process of joining the EU. But the witness explained that Romanian law required them to have permission to leave Romania and enter Ireland. He explained that Mr. H told him that he could go on holidays at Christmas, as they were not busy. He then went to organise his daughter's passport. He also explained that in Romania their daughter could only leave the country in the company of both parents. He bought a plane ticket for three weeks. He had explained to Mr. H that as his daughter's passport was not ready it might take an extra week (he had been allowed two weeks holidays). He got permission from Mr. H.

He arrived in Romania on 27th December. He received a phone call on 04th January to let him know that the passport was ready. He collected the passport on 04th January.

He arrived back to work in Ireland on 15th January. When he got to work he saw that a p.45 was on a table for him. Mr. H told him that there was no job for him.

He was never told that he could be dismissed for taking extra holidays. He explained that he would be mad to bring his family to a new country and not have work or money; he never imagined that he would lose his job.

Cross-examination:

The witness was asked if he saw the notice that stated that employees were not to take holidays at that time of year and he replied that he did not. He also explained when asked, that Mr. H told him (through another person) that he could go on holidays and if Mr. H told him that he could not go then he would not have. It was put to the witness that Mr. H said that he did not give permission to anybody, and the witness disagreed with this.

It was put to the witness that when he and others were in conversation with Mr. H, did the person who enquired of Mr. H about the permission ask the question in English and the witness replied in the affirmative.

The Tribunal asked the witness for clarification:

The witness explained that he and his co-workers and compatriots went to Mr. O'B (Mr. H's boss). Mr. O'B would not listen to them. He tried to explain to Mr. H, and to remind him that he had gotten permission from him to bring his family and Mr. H told him that it was not his decision and that there was no work. The witness did not know why Mr. H would say that, if he had given permission.

Closing statements:

Respondent representative stated that the cases arose because of a problem the previous Christmas.

The rules were brought in, in agreement with the union, that employees had to get permission from the management. No employee was given permission. The employees were also notified by the notice on the notice board.

Claimant's representative stated that the notice was in English and Russian but not in Romanian. The notice did not state dismissal and the employees should have been warned. The date on the p45's shows that the respondent was determined to dismiss the claimant's without process a week before their return. Also the Tribunal had to take into account how others were treated, for example the Moldovan employees were not dismissed; they were retained.

The Tribunal heard evidence from the **fourth named claimant**. He commenced employment with the company in 2003. Each year since then he had taken holidays at Christmas from in or about the 23rd December and for a period of no more than three weeks.

In September 2006 the claimant started to have dental problems and he mentioned to his supervisor, Mr. H that he intended to return to Romania for treatment during Christmas 2006. His supervisor replied, "no problem, but remind me again." The claimant booked his flight some time after speaking to his supervisor, as it was cheaper to book it earlier.

In November 2006 the claimant again spoke with his supervisor about the leave and his supervisor replied, "we'll see." The claimant reminded the supervisor about the conversation they had in September 2006. The claimant also reminded the supervisor that he had some remaining holiday entitlement.

During Christmas 2006 the claimant returned to Romania and underwent dental treatment at a significant saving than if he had received the same treatment in Ireland. When he returned to work on 15th January 2007, the supervisor told the claimants they were "finished". The claimant also tried to show the supervisor a document he had pertaining to his dental treatment but the supervisor would not listen to him. The claimants also attempted to speak with the manager in the office but he would not speak to them. The claimant was subsequently dismissed. The claimant was not previously warned that he could be dismissed if he took three weeks holidays at Christmas. He gave details to the Tribunal, pertaining to his mitigation of loss.

During cross examination the fourth named claimant stated that he had not previously seen the company's holiday procedure and he was not present at a meeting at which it was explained to the employees. The claimant was asked if he was specifically told by anyone from the company that he could have the time off and he replied "no".

The Tribunal heard evidence from the **fifth named claimant**. He commenced employment with the company in July 2000. In or around the end of October 2006 the claimant spoke with his supervisor, Mr. H, about returning to Romania for three weeks at Christmas. The claimant told his supervisor that he was going to book his ticket. The claimant booked his ticket in early November 2006 and the ticket was issued with a date of the 18th November 2006.

Some three or four weeks prior to Christmas 2006 the claimant reminded his supervisor that he was returning home for three weeks. The claimant also reminded his supervisor about his son's medical condition. The supervisor was aware of this medical situation since 2003 when the claimant commenced work. The claimant had a further worry in late 2006 as his father was very ill in hospital and he informed the supervisor of this some three or four weeks prior to Christmas 2006. The second time the claimant spoke with his supervisor regarding the leave his supervisor

responded by saying he'd have "to see". The claimant was not given any warning that taking a three-week holiday could result in his dismissal.

The claimant submitted medical documents from his son's doctor. The claimant explained that at that time he needed to travel to Romania as his son was undergoing a very important test. The claimant also referred in his evidence to a document submitted concerning his father's state of health.

The claimant returned from his leave on the 15th January 2007. The supervisor met with him and the other claimants and told them they were "finished." The claimant attempted to explain but the supervisor said he did not want to talk to the claimants. At this meeting there were five Romanian employees present and two Moldovan employees. The Moldovan employees had holidays the same time as the claimants but the supervisor allowed them to return to work. P45s were prepared for the claimants but not for the Moldovan employees. The claimants also tried to speak to the manager, Mr. O'B but he did not want to speak to them. The claimant attempted to show his supervisor the medical documents he had pertaining to the medical conditions of his son and father but his supervisor would not look at them. The claimant was subsequently dismissed. He gave details to the Tribunal pertaining to his mitigation of loss.

During cross-examination the fifth named claimant stated that the first time he had sight of the company's holiday procedure was at the hearing. The claimant did not recall a meeting where his supervisor explained this procedure.

The claimant stated that each time he spoke to his supervisor about his taking leave at Christmas 2006, his supervisor replied, "we'll see." The claimant confirmed his father was admitted to hospital on the 22nd December 2006.

The claimant accepted that he had taken leave in the summer of 2006 but that it suited the management if employees availed of holidays during the summer, as it was not a busy time for the company. The claimant was asked if the supervisor had said to him that he could have the time off, the claimant replied that his supervisor had told him "we'll see."

In reply to questions from the Tribunal, the claimant stated that he had always taken the same holidays in the summer and at Christmas. He had taken those same holidays in 2005, which was a busier year for the company than 2006.

Determination:

The decision to dismiss was taken before the claimants had proffered a reason as to their absence. The respondent did not give the claimants an opportunity to explain their absence. The P45s were dated three days prior to the claimants returning. The medical certificates for three of the claimants were not referred to the company doctor. It was unreasonable of the respondent not to accept the certificates. One person who is an Irish national had his medical certificate corroborated by the company doctor and that employee was allowed back with a warning. The dismissals were procedurally unfair. The third named claimant's dismissal was procedurally unfair as were the dismissals for the other claimant's.

Accordingly, the Tribunal makes the following determinations:

The First named claimant's case, ref: UD338/2007, under the Unfair Dismissals Acts, 1977 to 2007

succeeds and the Tribunal awards the claimant €15,000.00, as compensation. His case under the Minimum Notice and Terms Of Employment Acts, 1973 to 2005, ref: MN227/2007 succeeds and the Tribunal awards him €1,488.00, this being four weeks pay as compensation in lieu of notice.

The Second named claimant's case, ref: UD339/2007, under the Unfair Dismissals Acts, 1977 to 2007 was withdrawn on the first day of hearing and the Tribunal makes no award. His case under the Minimum Notice and Terms Of Employment Acts, 1973 to 2005, ref: MN228/2007 was withdrawn on the first day of hearing and the Tribunal makes no award.

The Third named claimant's case, ref: UD340/2007, under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the Tribunal awards the claimant €15,000.00, as compensation. His case under the Minimum Notice and Terms Of Employment Acts, 1973 to 2005, ref: MN229/2007 succeeds and the Tribunal awards him €1,488.00, this being four weeks pay as compensation in lieu of notice.

The Fourth named claimant's case, ref: UD341/2007, under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the Tribunal awards the claimant €15,000.00, as compensation. His case under the Minimum Notice and Terms Of Employment Acts, 1973 to 2005, ref: MN230/2007 succeeds and the Tribunal awards him €744.00, this being two weeks pay as compensation in lieu of notice.

The Fifth named claimant's case, ref: UD342/2007, under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the Tribunal awards the claimant €15,000.00, as compensation. His case under the Minimum Notice and Terms Of Employment Acts, 1973 to 2005, ref: MN231/2007 succeeds and the Tribunal awards him €1,488.00, this being four weeks pay as compensation in lieu of notice.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)