

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

RP278/2009  
UD288/2009

**claimant**

Against

Employer

**respondent**

under

### **REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr. L. Tobin  
Mr C. Ryan

heard this claim at Dublin on 28th July 2009

Representation:  
\_\_\_\_\_

Claimant(s): Ms Barbara Mebtouche, Triana, Independent Advice &  
Information Bureau, 13 Store Street, Dublin 1

Respondent(s): No representation or attendance by or on behalf of the respondent

The determination of the Tribunal was as follows:-

The claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn during the hearing.

#### **Claimant's Case**

The claimant told the Tribunal that his employer told him verbally on 23 December that he would be made redundant as he had too many sick days. He could not understand his employer, as his English was not good. He did not sign anything to say he was dismissed. He was informed of a disciplinary hearing fifteen minutes prior to the date of his dismissal. This employer told him to bring a friend but when he told him he would bring someone who understood more English it was not allowed. He learnt of his dismissal twenty minutes after the meeting started and he was not given a record of the meeting. He was not told that he had a right to appeal. He received holiday

pay for two weeks. He did not receive warnings. He was ill on 1 December 2008 and his friend delivered a medical certificate to the respondent on 2 December 2008. Medical certificates were always provided to the respondent if he was ill. He worked Saturdays and if he had a day off on Saturday he worked on Sunday. He was informed of the weekend roster on Friday afternoon.

In answer to questions from the Tribunal he stated that his English was not good but his friend always contacted his employer if he was absent from work. There was never an occasion when his friend did not contact his employer if he was absent. He had a chest infection and a problem with his back. He went to the respondent premises while he was on sick leave, as he had to collect some of his belongings including his wallet. He had keys to the respondent premises, there was no member of management available and a friend who worked for another branch of the respondent accompanied him. He returned to Poland in February 2009 until July 2009 to take care of his grandfather who was ill. At present he is not working. He could not recall receiving a verbal warning and he did not receive a written warning. He asked for redundancy in January 2009. When he requested one of his friends to attend the meeting on 22 December 2008 he was asked to bring someone else. He worked as a forklift driver. He did not have any sickness over a two-year period and he was ill for a period of two weeks over two months.

### **Respondent's Case**

The respondent did not attend the hearing but the Tribunal is satisfied that the respondent received his notice of hearing. The respondent subsequently notified the Tribunal that he had mislaid his notice of hearing and apologised for his non-attendance.

### **Determination**

It is clear that the claimant's evidence regarding his employment and the disciplinary procedure is contradicted in written evidence furnished to the Tribunal by the respondent. Unfortunately the respondent was not in attendance. In the circumstances the Tribunal determines that the dismissal of the claimant was unfair. However it also believes that the claimant himself contributed to the circumstances giving rise to the dismissal. The Tribunal awards the claimant compensation of €2,500 under the Unfair Dismissals Acts, 1977 to 2007.

The claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn during the hearing and no award is being made under this Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

