

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

– *claimant*

CASE NO.

UD259/2009

MN257/2009

against

Employer

– *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Fahy B.L.

Members: Mr. B. O'Carroll
Mr. J. Le Cumbre

heard this claim at Athlone on 1st September 2009

Representation:

Claimant(s): Ms. Collette Egan B.L. instructed by Ms. Karen Costello, Byrne Carolan
Cunningham, Solicitors, 39/41 Oak House, Mardyke Street, Athlone,
Co. Westmeath

Respondent(s): No appearance or representation

The determination of the Tribunal was as follows:-

Introductory points:

The hearing of this case was scheduled to commence at 2.30pm. The Tribunal waited until 2.45pm to allow sufficient time for all parties to arrive before proceeding with the hearing.

At the commencement of the hearing, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was formally withdrawn by and on behalf of the claimant.

Claimant's case:

In sworn evidence, the claimant confirmed that the respondent had employed him as a driver of a variety of vehicles from forklifts to articulated lorries.

The claimant commenced working for the respondent on a FÁS training course in approximately June 2005. He had been previously unemployed and had worked with a friend doing panel beating

and spraying. Following completion on the FÁS course, his friend had contacted the respondent's transport manager seeking work experience for the claimant. During the period of his work experience, the claimant was paid by FÁS. After a few weeks on work experience, the respondent took the claimant on full time. This occurred not later than July 2005 and he worked continuously for the respondent until he was dismissed. The claimant's wages were paid into his bank account and he received payslips.

In September 2008 while working on a forklift loading trailers, the claimant saw the respondent's accountant in the yard. He approached the accountant and asked about the two and a half hours overtime that he was owed from the previous week. The accountant went and enquired from the transport manager about same. The transport manager then approached the claimant and complained about his looking for the overtime and enquired if he was serious about this, in the economic downturn. The claimant had said that he was seeking his rights in asking for payment of the overtime and to this, the transport manager had replied that, instead, he was giving the claimant two weeks notice. The claimant tried to talk to the transport manager about this later in the day but the transport manager refused to engage. Thereafter, the claimant kept his head down as his employment ended.

The claimant was surprised to get notice of the termination of his employment. He had been a good worker, had gotten on well with the other employees and had liked his job.

The claimant confirmed that he never received a copy of the respondent's grievance and disciplinary procedures, nor was he aware if same existed. Everyone knew about the circumstances of his dismissal because many people had been in the yard at the time and had crowded around. The claimant had told them at that time that he was "gone in two weeks".

The claimant had tried to get the transport manager to reconsider his decision. He had not tried to contact the respondent's owner, as he – the respondent's owner – was someone who could not be approached. In any event, it had been the transport manager, in his role as transport manager, who had hired and fired the claimant.

The claimant established his loss for the Tribunal. Five days after his employment ended with the respondent, the claimant secured alternative employment with a transport company as an articulated lorry driver. However, this employment lasted for a period of six weeks. This company was subsequently taken over by the respondent. The reason given to the claimant for the termination of this employment was that they had no work for a long distance lorry driver. The claimant also sought employment locally and used the services of FÁS. He registered with the local job club on 8 May 2009 and had been actively seeking alternative employment, though he had been unsuccessful. He was in receipt of unemployment benefit.

When asked by the Tribunal, the claimant was unable to indicate the level of overtime that he worked for the respondent except to say that it depended on the number of hours worked and how busy he would be during the day, in getting his work completed. He worked the overtime after clocking out at 5.00pm and same was paid to him in cash, at time and a half.

The claimant stated again that the respondent dismissed him because he sought the two and a half hours overtime that was due to him, and for no other reason.

Determination:

The Tribunal was satisfied that the respondent was duly notified of the hearing. However, there was no appearance by them, or representation on their behalf.

Having heard the uncontested evidence of the claimant, the Tribunal was satisfied that the claimant was not afforded any opportunity to process a grievance in relation to unpaid overtime. The Tribunal was also satisfied that the respondent failed to put in place any grievance procedures for its employees, and in particular, the claimant. Accordingly, the Tribunal determines that the claimant was unfairly dismissed on 19 September 2008 and awards him compensation in the sum of €20,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal notes that the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was formally withdrawn as, on 5 September 2008, the claimant received two weeks notice of the termination of his employment.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)