

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

UD224/2009

MN224/2009

against

Employee

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Cagney BL

Members: Mr D. Moore
Mr J. Maher

heard this claim at Dublin on 23rd July 2009

Representation:

Claimant(s) : In Person

Respondent(s) : Mr. Joseph Burke, McCartan & Burke, Solicitors, Iceland House, Arran Court,
Smithfield, Dublin 7

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant gave evidence. He was employed as a Security Officer located at a public house contracted to the respondent.

He, and some colleagues, were working on the premises in question on the evening of December 26th 2008 but were not paid for it at the time. They received payment in January 2009 but it was a reduced payment. He spoke to the proprietor of the public house and his Manager on behalf of himself and his colleagues concerning the matter and was informed it would be sorted out. Some weeks later he received his payslip and discovered an overpayment of tax.

He again spoke to the proprietor and was informed by him that he was fired. He could not contact his Manager by telephone so he texted him and asked him to meet him. He explained that this was the normal form of communication between them. On January 9th 2009 he met the Manager. The claimant gave evidence of loss.

On cross-examination he stated that he had been paid a reduced amount for working December 26th 2008. He denied that he had told his Manager on January 9th 2009 that he refused to pay tax. When put to him that when the Manager asked if he was turning up for work that evening and he had replied, “we’ll see”, he replied that they had to sort the situation out. When asked if he was accusing the Manager of robbing him, he replied, “Yes, it was not fair to pay extra tax”. He said it was not correct to say that he had stormed off from work on the evening of January 9th 2009.

Respondent’s Case:

The Director of Operations and claimant’s Manager gave evidence. On January 8th 2009 he received a text message from the claimant concerning a problem with his wages and wanted to meet him. They met the following afternoon in Swords. The claimant and his colleagues had a problem with their payments of December 26th 2008. They felt they were being robbed and the claimant told him he would have the company investigated. He told the claimant that he had to pay tax on whatever hours he worked. He asked the claimant was he turning up for work that evening and was told, “We’ll see”.

On the evening of January 9th 2009 he had another staff member on standby in case the claimant did not turn up for work. He was not present on that evening himself but working a short distance away. He received no contact from the claimant that evening. He explained that the proprietor of the public house did not have the authority to fire the claimant. Later that night he spoke to the proprietor and was informed that claimant had stormed off earlier. The claimant was due in work the following day but did not turn up. He stated that the claimant had not been fired but had walked away of his own accord.

On cross-examination he said there had been no shortage in the claimant’s wages although there had been a delay in processing them due to the holiday season. Due to this fact the payment was not paid until 2009 and therefore it was liable for the newly introduced Income Levy. The claimant requested his P45.

When asked by the Tribunal he said there had been a problem with payments in the past but it was only small amounts and was always resolved. He had not contacted the claimant over the weekend he had stormed off. In his view the claimant had made up his mind to leave. He produced a text to the Tribunal from the claimant stating, “ Hi Ivan pls let me know will you give me few nites if not P60 and P45” at 4.29 p.m. on January 12th 2009.

The payroll clerk gave evidence. She explained the company had a computerised payroll system. The employees’ hours worked for the client was emailed to her on a Monday morning and the payroll run on a Tuesday. Payslips were distributed by management on a Friday and wages paid into the employees bank accounts.

The payment for December 26th 2008 was delayed, as the time details had not been received. All staff were informed. On January 1st 2009 the Income Levy was introduced by the Government, which applied to all taxpayers. The claimant made a payment of € 8 but received a tax refund when he resigned. The Manager had informed her that the claimant wanted his tax payments spread over a number of weeks but explained that this could not be done.

The proprietor of the public house the claimant was employed in gave evidence. His premises employed 4 of the respondents’ staff. On January 9th 2009 the claimant was due in

work at 10.30p.m. The claimant arrived and asked him what the story was twice. He said he had spoken to the Manager and he replied so had he. The claimant asked, “Why are you playing these games” and stormed off. He stated there were no new staff on duty that evening.

Determination:

Having heard the evidence adduced by both parties the Tribunal accepts that there was confusion involving the delay in the December 26th 2008 payment and subsequently the compulsory Income Levy payment in 2009. The claimant accepted in evidence however that no member of the respondent’s management had dismissed him and agreed the proprietor of the public house was not his employer.

Accordingly, the Tribunal finds there was no dismissal and therefore the claim under the Unfair Dismissals Acts, 1967 to 2005 fails. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)