

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

Employee

-first named claimant

CASE NO's.

UD1325/2008, RP1145/2008

MN1231/2008, WT549/2008

Employee

-second named claimant

UD1327/2008, MN1233/2008

WT550/2008

against

Employer

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal

(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Mr G. Phelan

Mr D. McEvoy

heard this claim at Limerick on 7th July 2009

Representation:

Claimants: Ms. Deirdre Canty, Assistant Branch Organiser, Siptu, 4
Church Street, St. John's Square, Limerick

Respondent: XXXX

Background:

The two claimants are a married couple from Poland who were employed by the respondent. They were dismissed by the respondent for returning to work late after their holiday.

The Tribunal heard evidence from the production manager of the respondent. He explained that the company had a problem with the employees from Poland regarding holidays. He noticed that the records for the two claimants in this particular case stood out.

The witness had previously noted that the claimant's absentee records were poor but at the time he had not taken the opportunity to implement the disciplinary procedures. He told the Tribunal that if he had previously issued a warning to them then they might not be before the Tribunal. He would probably have given them a final warning and he had issued other employees warnings.

He met the claimants on 19th August 2008. He was trying to get an explanation why they arrived back late from their holidays. He recommended to the management (the MD and the operations manager) that the claimants be summarily dismissed. The claimant's were summarily dismissed on 20th August 2008.

The Tribunal heard evidence from the first named claimant who told the Tribunal that he was not asked to provide evidence as to the flights. He never received any warnings from the respondent.

As far as he knew no other employee was dismissed for the same reason as they were.

The Tribunal heard evidence from the second named claimant who told the Tribunal that she was in fact in work on 18th August. She was called into a room and told that she was suspended until the next day. She explained that they had problems with their flight and she told the production manger this. She could not recall if the manager asked for documents about this. She was never given any warnings.

Determination:

The procedures used for the dismissal were wanting. The claimants were not given any previous warnings. The employer did not properly investigate the absences of the claimant; they were not asked to provide evidence of flights. There was also evidence adduced that there was some difficulty regarding the representative afforded the claimants at the meeting. Further the Tribunal finds that it was a disproportionate penalty to dismiss the claimants.

For all the aforementioned reasons the Tribunal finds that the dismissals were unfair. Notwithstanding that the claimants did contribute to their dismissal.

The first named claimant, reference UD1325/2008:

The Tribunal awards the first named claimant the sum of €1,572.00, as compensation under the Unfair Dismissals Acts, 1977 to 2007.

The claim under the Redundancy Payments Acts, 1967 to 2003, is dismissed.

The Tribunal awards the first named claimant the sum of €786.00, this being two weeks gross pay, under the Minimum Notice and Terms Of Employment Acts, 1973 to 2005.

The claim under the Organisation of Working Time Act, 1997, is dismissed, as there was uncontroverted evidence that the claimant's had received their full entitlement.

The second named claimant, reference UD1327/2008:

The Tribunal awards the second named claimant the sum of €1,460.00, as compensation under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal awards the second named claimant the sum of €365.00, this being one week gross pay, under the Minimum Notice and Terms Of Employment Acts, 1973 to 2005.

The claim under the Organisation of Working Time Act, 1997, is dismissed, as there was uncontroverted evidence that the claimant's the claimant's had received their full entitlement.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)