

Correcting Order

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
Employee
- *claimant*

CASE NO.
UD1291/2008
MN1193/2008

WT524/2008
against

Employer - *respondent*
under

UNFAIR DISMISSALS ACTS, 1977 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 P. Hurley

Members: Mr G. Phelan
Dr. A. Clune

heard this claim at Ennis on 1st April 2009

Representation:

Claimant: Mr. Gearóid Howard, Crimmins Howard, Solicitors, Dolmen House, Shannon,
Co. Clare

Respondent: Aoife Hennessy, Sweeney McGann, Solicitors, 67 O'Connell Street, Limerick

The determination of the Tribunal was as follows: -

Determination:

This order corrects the original Order by replacing XXXX with the XXXX.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

Employee

- claimant

WT524/2008

against

Employer

- respondent

under

CASE NO.

UD1291/2008

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MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

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Claimant: Mr. Gearóid Howard, Crimmins Howard, Solicitors, Dolmen House, Shannon,
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Respondent: Aoife Hennessy, Sweeney McGann, Solicitors, 67 O'Connell Street, Limerick

The determination of the Tribunal was as follows: -

Claimants Case:

The claimant worked full-time as a night porter with the respondent. In June 2008 the claimant went home to Poland on holidays until the 16th of June 2008. The first week after his return he was rostered to work for two days, the second week he was not rostered to work any hours. The claimant talked to his Manager about the decrease in hours and discovered that another night porter had been hired while he was on holidays and they would be sharing all future hours. The claimant was assured he would be back on the roster the following week. The claimant did not work full-time hours the following week and was again informed he had to share the work with the new night porter. The week starting the 23rd of July and the 30th of July 2008 the claimant was rostered off for the weeks but not informed. The claimant returned the following week to check his hours of work but found his name no longer appeared on the work roster. The claimants P45 states that he

left employment on the 29th of July 2008 but he appears on the roster for the week of 6th August 2008. The claimant secured a position with another company while still in the employ of the respondent. The respondent was aware that the claimant had secured a second job and his working days not his hours were adjusted. The respondent was not happy with this arrangement anymore so the claimant told his Manager he wanted to stay working with the respondent and did not continue his work with the new company.

The claimant started a college course in Poland before he came to live in Ireland. When he did the interview with the respondent he informed them that he would have to fly to Poland every second weekend for four to five days. The claimant commenced work with the respondent while he was on a break from college. The claimant worked 1-2 weeks then had 4-5 days off. An arrangement was made that the claimant informed the respondent when he was available and the rosters were prepared around his schedule. During the time he was rostered off without his knowledge, the claimant rang the respondent to inform them he was available for work. The claimant called to the respondent premises every Tuesday to check his hours for the following week; he kept the respondent informed that he was available to work.

Respondents Case:

The General Manager was not involved with employing the claimant. At the end of 2007 the claimant informed him that he was attending college in Poland and he would need 2 days off at the end of a rostered week and two days at the start of the next rostered week, the arrangement worked to facilitate the claimant attending college. The General Manager made it clear that the claimant was required to keep in contact regarding his availability to work. The claimant met with the General Manager in June and informed him that he had secured a second job. The General Manager said he would need one weeks notice if he was leaving. The claimant said he was not leaving but could only work Monday and Tuesday to work around the second job. On returning from holidays the General Manager only rostered the claimant for two days a week as requested. The General Manager usually received texts from the claimant when he was in Poland to notify him of the claimant's availability. The claimant was not rostered to work for the week, as the respondent had no contact from the claimant or no response to messages left for him. The General Manager was not aware that the claimant asked for him when he came in to check the roster. The respondent's accounts section rang the General Manager and inquired about the status of the claimants employment, the General Manager told them he hadn't heard from him so the P45 was issued.

The claimant, at the meeting in June with the General Manager requested the radical changes to his rostered hours. The new night porter was employed, as the claimant was no longer available to work full-time hours. The General Manager agrees that the change to the claimant's hours should have been indicated in a new contract.

Determination

The appeal under the Organisation of Working Time Act, 1997 was withdrawn during the hearing.

Based on the evidence given by all parties, the claimant made himself available for work to the respondent and did not terminate his employment. In this context the issuing of the P45 is evidence indicative of an intent to dismiss the claimant. The Tribunal have found that the claim under the Unfair Dismissals Acts, 1977 To 2001 succeeds and the claimant is awarded €1000.00 as compensation under those Acts.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 is allowed and the appellant is awarded €152.00 as compensation for one week's notice.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)