

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

MN210/2009
UD213/2009

against

Employer

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 T. Taaffe

Members: Mr. A. O'Mara
Mr. S. O'Donnell

heard this claim at Dublin on 20th July 2009

Representation:

Claimant :

Mr. Pdraig Murphy, Solicitor, 54 South William Street,
Dublin 2

Respondent:

XXXX

The determination of the Tribunal was as follows:-

At the outset the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn by the claimant's legal representative

Respondent's case:

The respondent runs a private coach hire business

The director in his evidence told the Tribunal that in early December 2008 the claimant stated that he wanted to take holidays at Christmas. He worked six hours per day five days per week. The

claimant wanted to go on holidays from 15th December 2008 to 1st January 2009 inclusive. Witness told him that he could not go on holidays for three weeks but the claimant went ahead and booked the flight. On 12th December 2008 the claimant arrived in with his plane ticket and witness gave him a weeks notice and paid him any holiday pay due. He felt there was no point in his coming back in three weeks. The claimant had no regard to the length of his intended holiday or how the respondent would cope in his absence.

In cross-examination witness stated that there are twenty employees, sixteen of which are full time and there are six to seven part-time staff. Twenty of these are drivers and they are paid by the hour. Some are with the respondent fifteen/twenty years and these are paid a wage. New employees are paid €13-15 per hour. Their garage is located in Rathfarnham, Dublin and up to June 2008 they had a second depot in Maynooth. Reliability is important as a staff member and the buses must be clean. Initially the claimant was working eight hour per day at €9 an hour. His job was sweeping, cleaning and mopping floors. Witness showed him what to do and some buses did not need to be cleaned every day. It would take ten minutes to two hours to clean a bus. Where they had one cleaner, they now have none. The claimant would not be asked to drive a bus. The claimant was dismissed rather than being made redundant. The claimant was never issued with a written warning. In relation to verbal warnings witness would point at his watch if the claimant was taking long lunches. On two occasions witness told the claimant he was not due three weeks holidays. The claimant arrived in with his plane ticket on 12th December. If he had saved his holidays as did other employees it would not have been a problem. In some cases the driver now cleans his own bus. Witness cleaned the buses for approximately three weeks over the Christmas period while the claimant was on holiday. A friend on work experience cleaned the buses for three weeks also.

In answer to questions from Tribunal members witness stated that the claimant received his full holiday entitlement for 2007. In relation to the holidays for 2008 the claimant had one week left according to the records of the respondent. The business does not close for Christmas and they do charity runs for Christmas day. There was a chart on the wall for recording holidays and in early December the claimant put his name on this chart stating he was taking holidays from the 12th December 2008 to 2nd January 2009. The girl in the office stated he was not due all the days holidays he requested. The day after the claimant put his name on the holiday chart, ie 2nd/3rd December the respondent went to see him and he spoke to the claimant again a couple of days before the 12th December.

He told the claimant there would not be a job for him when he returned from his holidays and the claimant understood what this meant.

Claimant's case:

The claimant is a Lithuanian national who came to Ireland in January 2003. He commenced his employment with the respondent on 17th May 2007. He was not warned that his job was at risk if he went ahead and took the holidays. The respondent was always very busy and he talks very fast. If he took just a weeks holidays his plane ticket would be very expensive and the earlier he booked would also mean he would get a cheaper flight. He had a general discussion in the office with B, who is also a director of the company, in or around early December 2008 and cleared the dates in respect of holidays with her. He explained to B that he would take one weeks holidays and the balance of five days he would take as unpaid leave. On 12th December 2008 the respondent said the business was slowing down. He gave the claimant his P.45. and he was told to leave the site. When the claimant called back to the respondent premises in January 2009 he discovered that a new

Polish employee was doing the cleaning. This new employee told him that he had seen the advertisement for the job in a local shop and he had been working with the respondent a couple of months. This new employee was doing the claimant's job when he called in on 2nd/3rd January. The claimant has since obtained alternative work on a part-time basis.

In cross-examination witness stated that when he spoke to B she told him he could take holidays but that he had only one week remaining. She told him he could order his ticket.

In answer to questions from Tribunal members it was put to the claimant that taking into account the total number of days between 12th December and 2nd January and the fact that he had only five days holidays remaining, would necessitate him taking far in excess of five extra days. The claimant then outlined his efforts to secure alternative employment. He stated that while working with the respondent he did part-time work in the evenings cleaning offices and this has continued. While the respondent told him he had to change his ticket it was not made clear to the claimant that would lose his job if he went ahead with his holiday plan.

Determination:

Having heard the evidence in this case the Tribunal is unanimous that the claimant substantially contributed to his own dismissal however there was a clear absence of procedures on the part of the respondent therefore the dismissal was procedurally unfair. The Tribunal awards the claimant the sum of €750 as is just and equitable in all the circumstances under the Unfair Dismissals Acts, 1977 to 2007. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn prior to the hearing.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

