

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD634/2007

WT213/2007

MN493/2007

against
EMPLOYER

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.
Members: Mr P. Pierson
Mr F. Barry

heard this claim at Portlaoise on 12th March 2008 and Tullamore on 5th January 2010

Representation:

Claimant(s) :

Claimant in person

Respondent(s) :

1st hearing: Peninsula Business Services Limited, Riverside, New Bailey Street,
Manchester, M3 hpb, United Kingdom

2nd Hearing: No appearance by or on behalf of the respondent.

The determination of the Tribunal was as follows:-

Having already ruled in relation to a preliminary issue heard on 12th March 2008 the Tribunal proceeded to hear the substantive issue on 5th January 2010.

There was no appearance by or on behalf of the respondent at this hearing. The Tribunal were satisfied that the respondent was properly notified of the hearing.

Claimant's case

The claimant stated that she was employed by the respondent from 11th November 2004 to 29th June 2007. Having given notice of dismissal on 26th June 2007 the respondent dismissed the claimant on 29th June 2007.

The claimant alleged that this was an unfair dismissal, as she had not done anything to merit this. In relation to mitigation of loss the claimant said that she commenced employment with another company on 16th July 2007.

Furthermore the claimant stated that she was due one annual leave day for which she was not paid.

Determination

Having considered the uncontested evidence of the claimant the Tribunal finds that the claimant was unfairly dismissed. Taking into account the claimant's efforts to mitigate any loss suffered the Tribunal awards the claimant €2,200.00 under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal finds that the claimant did not receive adequate notice of dismissal and therefore awards the claimant €770.00 under the Minimum Notice and Terms of Employment Act, 1973 to 2005.

The Tribunal finds that the claimant was due one annual leave day for which she was not paid and awards the claimant €110.00 under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD634/2007

MN493/2007

WT213/2007

against

EMPLOYER

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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)

Chairman: Ms. E. Daly B.L.

Members: Mr. P. Pierson
Mr. F. Barry

heard this claim at Portlaoise on 12th March 2008

Representation:

Claimant: In person

Respondent: Peninsula Business Services Limited, Riverside, New Bailey Street,
Manchester, M3 5pb, United Kingdom

The determination of the Tribunal was as follows:-

The Tribunal pointed out that certain cash payments made to the claimant may have to be reported to the Revenue Commissioners. A preliminary issue of whether the claimant had sufficient service was raised by the Respondent. They said that she did not have sufficient service, that her service was broken.

Claimant's evidence:

The Claimant said that she started working for the Respondent on 11 April 2004. She resigned from the company on 29 March 2006, but began working for them again on a casual basis two weeks

after that. She said that she had an issue with a particular customer on the bus, and that DO'C had given her incorrect information in relation to this, so that was why she resigned. She did not intend to return, nor did she put her resignation in writing. She began working full time again with the company in September 2006, and her date of termination was 29 June 2007. She got a new job on 16 July 2007 at the same rate of pay. She said that she lost one day's pay, which she was still entitled to (this day's pay was conceded by the Respondent). She was working seven days a week by 2006 and it got too much for her. Two weeks after resigning DO'C asked her back to do odd runs, and also said that he wanted her to do the Mullingar run from September of that year.

She said that she went to South Africa in June, but returned four weeks later. She could not remember if she worked after she came back from South Africa in July or August. She was paid €100 a day for the casual work. She started full time with DO'C again at the beginning of September 2006. She denied that she refused to do the Oxygen run, and did in fact do it. She had intended to remain in South Africa but changed her mind. She was unable to be specific about the casual work that she did, but certainly recalled doing the Oxygen run. When asked if she had any proof of doing the casual work she said that she filled in tachographs, but that she was paid in cash. She was given P60's. She gave details that she recalled of the Oxygen run i.e. numbers on the bus, the routes taken, other drivers she encountered, starting and finishing times, traffic problems etc.

Respondent's evidence:

He said that the Claimant resigned on 29 March 2006, went back to South Africa, and returned in September 2006, and that he then asked her to go back to work with him. She did not come back in April 2006, nor did she work on a casual basis for him between March and September 2006. She said that she was tired doing the job and wanted to leave. He asked her to stay but she said no. She did not do casual work for him, but did travel on the bus with her husband who also drove a bus for the company. He felt that the Mullingar run would be an easier job for her, so he offered this to her and she started work again with him in September 2006, but she was not employed between April and September 2006. He said that she refused to do the Oxygen run for him, and denied that she had done any casual work for him. He said that the Oxygen run was in August each year. He paid her cash for Saturday work because she refused to work on a Saturday unless she was paid cash.

Determination of the Preliminary Issue:

There was a dispute between the parties as to whether the claimant was employed during the period from 29 March 2006 to 4 September 2006. The respondent has raised submissions in which it repeatedly argued that there was a clear break of employment between 29 March 2006 and 4 September 2006.

At the request of the Tribunal the respondent submitted tachograph and diary material for this period. These were furnished but were not sufficient to be a complete record of this period. Nonetheless, there is a diary entry which confirms that the claimant worked for the respondent on 10 July 2006. This contradicts the position reported consistently by the respondent stating that the claimant did not work from March to September 2006.

The claimant, in her evidence, said that, after a four-week holiday in South Africa in June 2006, she returned and worked for the respondent on an ad hoc basis during the summer months of 2006. She gave evidence that she worked on the Oxygen festival, which occurred in August 2006. She further submits that the reason her details do not appear on the payroll for the period is that she was paid in cash.

There is a clear conflict of evidence in this case. The Tribunal prefers the evidence given by the claimant. This is based on the respondent's own documentary evidence contradicting its position. On this very narrow basis the Tribunal finds that the employment is continuous.

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(Sgd.) _____
(CHAIRMAN)