

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD784/2009, MN807/2009

WT343/2009

against

EMPLOYER

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 T. Taaffe

Members: Mr J. Browne
Mr A. Butler

heard this claim at Wexford on 19th April 2010

Representation:

Claimant : Mr Anthony F O'Gorman, Anthony F O'Gorman & Co, Solicitors,
St Michael's Road, Gorey, Co Wexford

Respondent : No representation listed

The determination of the Tribunal was as follows:

Respondent's Case

This company was involved in the construction business and prior to 2008 it employed up to thirty staff including the claimant. In that year the respondent suffered such a rapid decline in its business that the vast majority of its workforce had lost their jobs by year's end. The managing director told the Tribunal that the company was no longer trading. This witness in the presence of others including a translator met the claimant some weeks prior to the claimant's termination of employment. He told that group that there was no more work available with the respondent and indicated that the claimant would be re-employed by a son of the managing director. This witness who was not responsible for wages accepted the claimant's contention that there was still outstanding payments due to him for holiday pay.

Claimant's Case

The claimant commenced employment with the respondent in June 2006. He attended what he considered a regular fifteen-minute meeting with the managing director in early October 2008. There he was presented with a yellow coloured document and told not to worry about it. Subsequent to that meeting his brother-in-law and fellow co-worker told him he was being transferred to work for the managing director's son. That changeover occurred the following month and the witness continued in his employment for several more months.

Determination

Having considered the evidence the Tribunal finds that the respondent did not unfairly dismiss the claimant. The claimant accepted the respondent's offer of alternative employment. The claim under the Unfair Dismissals Acts, 1977 to 2007 falls.

Since no liability for notice has been shown in the case the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 falls.

The appeal under the Organisation of Working Time Act, 1997 is allowed and the appellant is awarded €1920.00 for outstanding holiday entitlements under that Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

