

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE - **claimant**

CASE NO.  
MN822/2009  
WT349/2009

against

EMPLOYER - **respondent**

under

### 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. P. Casey  
Mr. J. Flavin

heard this claim at Tralee on 21 May 2010

Representation:

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Claimants:

Ms. Nuala Liston, Liston & Company, Solicitors,  
8 Day Place, Tralee, Co. Kerry

Respondent:

Mr. Gearóid Ryall, Mannix & Co. Solicitors,  
12 Castle Street, Tralee, Co. Kerry

The decision of the Tribunal was as follows: -

The claimant, who was born in November 1990, commenced employment with the respondent in April 2007. The respondent's position is that in April 2007 the claimant produced a CV giving his birthday as being in November 1989.

There is a dispute between the parties about the hours worked by the claimant. The claimant's position is that he was hired to work around 25 hours a week but that he regularly worked up to 50 hours a week from 6-00pm until 3-00 or 4-00am. The respondent's position is that the claimant was initially hired for 15 to 20 hours a week to clean and stock shelves. After some four or five months he began training as a barman and his hours were from 6-00pm until midnight or 1-30 to 2-00am on busy nights, with a weekly total of 40 to 45 hours. It is common case that he worked approximately

an hour each morning from around 9-00am “bottling up”. The claimant had a set of keys to enable him to gain access to the premises to carry out this task. There was no written contract of employment and the claimant did not receive payslips.

The respondent was robbed during the early hours of 11 February 2008 and a considerable amount of cash was stolen. The claimant’s brother was involved in this robbery and the claimant accepts that access was gained using the keys, which the respondent had supplied to him. The claimant’s position is that he gave the keys to his brother under duress.

The managing director (MD) of the respondent became aware of the involvement of the claimant in the robbery and issued an instruction that the claimant was not to enter the premises of the respondent. MD met the claimant during the evening of 11 February and they talked in MD’s car. There is a dispute between the parties as to whether the claimant was forced into MD’s car but it is not disputed that MD confirmed that the claimant was not to return to the premises.

### **Determination**

It is clear to the Tribunal that, following the robbery, MD dismissed the claimant on 11 February 2008. This was a conduct based dismissal such that there is no entitlement to notice pay. Accordingly, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 must fail.

The claimant told the Tribunal that he received one week’s paid holiday during the employment. The respondent was unable to produce any records of the annual leave taken by the claimant. Section 25 of the Organisation of Working Time Act, 1997 places an onus on the respondent to keep such records. Accordingly, the Tribunal awards €816-20 under the afore-mentioned Act, being the equivalent of the balance of annual leave due to the claimant.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)