

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO.
UD904/2009
RP1028/2009
MN934/2009
WT396/2009

against

EMPLOYER
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 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. J. O'Connor

Members: Mr. P. Casey
Mr. D. McEvoy

heard these claims in Killarney on 30 April 2010

Representation:

Claimant(s):
Mr Gavin Hinchy, PJ O'Driscoll & Sons, Solicitors,
73 South Mall, Cork

Respondent(s):
Mr. Eoin Brosnan, Niall Brosnan & Co., Solicitors,
5 St. Anthony's Place, College Street, Killarney, Co. Kerry

The determination of the Tribunal was as follows:-

Claims were lodged on behalf of the claimant under redundancy, unfair dismissal, minimum notice and working time legislation in respect of an employment from 20 December 2000 to 3 January 2009. It was claimed that the claimant should be given a declaration of entitlement to a redundancy payment or, in the alternative, compensation for unfair dismissal. The claimant worked part-time in security for the respondent's public house.

At the hearing the respondent's representative stated that the claimant had worked for €15.00 per hour but did not agree 3 January 2009 as the claimant's termination date and stated that the claimant's entitlement to redundancy was denied.

The claimant's representative argued that redundancy was claimed after the claimant had been laid off for more than six weeks and had not been brought back. He submitted that if there had not been a redundancy there had been an unfair dismissal. Minimum notice and compensation for outstanding annual leave were also claimed.

The respondent's representative stated that the respondent's pub in Killarney town centre was a lot quieter in winter when less staff would be needed. The claimant was not needed for January 2009 but it was submitted that attempts were made to get him for the St. Valentine's weekend and that it was not a genuine redundancy situation because the respondent had intended to employ him. In February 2009 redundancy was sought. In March the claimant was told that he would be needed. The claimant had not been available for numerous working nights in previous years when it had been offered as he had held down many jobs in Kerry. The respondent employed three security staff at busy weekends. Other men continued to work there. They worked St. Valentine's weekend and St. Patrick's and would do more as the year went on. The claimant had subsequently got employment in the prison service and could no longer do private security work. The claimant had approached the respondent's father and it was submitted that the claimant wanted, in effect, quick money. The respondent had had no problem with the claimant's standard of work and the claimant had always been very professional but it was submitted that there had not been a genuine redundancy situation.

Determination:

The Tribunal heard testimony by the claimant, the respondent and the respondent's bar manager. The Tribunal had to consider whether the bar manager had, in speaking to the claimant about the quiet time that followed New Year's Day 2009, caused the claimant to believe that he would not be given further work as distinct from believing that he would possibly only work around occasions like St. Valentine's Day and St. Patrick's Day until the respondent's premises would get busier. The claimant impressed the Tribunal in that the claimant not only worked for the respondent but would also arrange security for the respondent when he could not be present himself. The respondent's representative submitted that the claimant was somewhat opportunistic in seeing himself as redundant in early 2009. The Tribunal was told that the bar manager did not have the authority to hire and fire. The Tribunal was so impressed by the claimant's ability to find work for himself at various locations (and for others at the respondent's premises) that the Tribunal cannot accept that the claimant was someone who could not clarify whether or not the respondent would want to give him more work. There was some conflict of evidence about attempts at making contact between the claimant and the respondent. However, the Tribunal was not satisfied that this was a genuine redundancy situation. The appeal under the Redundancy Payments Acts, 1967 to 2007, fails.

Regarding the claim under the Unfair Dismissals Acts, 1977 to 2007, the Tribunal was not satisfied that there had been a dismissal. The claim under this legislation fails.

Given that the Tribunal was not satisfied that the respondent had terminated the claimant's employment, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fails.

The claim under the Organisation of Working Time Act, 1997, also fails. It was not specifically demonstrated to the Tribunal that there was a computed leave entitlement outstanding to the claimant based on the number of hours he had worked whether or not those hours were worked on the nights of public holidays.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)