

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

EMPLOYEE

-claimant

against

CASE NO.

UD720/2008

MN655/2008

WT298/2008

EMPLOYER

-respondent

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 L. Ó Catháin

Members: Mr J. Hennessy

Ms H. Kelleher

heard this claim at Waterford on 20th November 2009

Representation:

Claimant: Mr. James J. Hally, Solicitor, "Eldon",
Main Street, Tramore, Co. Waterford

Respondent: Ms. Claire Hellen, Ibec, Confederation
House, 84/86 Lower Baggot Street, Dublin 2

Respondent's case:

The Tribunal heard evidence from a witness (also known as SCW) from the respondent. He explained that a "rigger" installs a tower or a monole structure on a building. The work includes installing cabling antennae and steelwork fixing. The riggers get paid on a daily rate. The claimant installed antennae and cabling. He did not think that the claimant was a telecommunications person before he worked for the respondent.

At some time the Board of directors decided that the subsistence allowance would be removed from all employees because of the economic climate.

The company were engaged in a re-tendering process with a large customer. They were successful. However the customer was awaiting planning permission. The work that the respondent had was sporadic. They respondent had supervisors and riggers on their books. They retained four supervisors. It was not feasible to retain fourteen riggers on their books. The claimant was not a supervisor. The company let ten riggers go. On Friday 25th there was a meeting and ten employees

were informed. The witness was not at the meeting. A letter issued to that effect and a Mr. JH issued the letters.

The witness explained that they had been using a sub contractor to do some rigging. They retained the sub-contractor to complete some work and that work was sporadic.

He had a meeting with the claimant regarding damage to the company vehicle. There was a disagreement about the matter. He explained that the claimant crashed the vehicle on the way to work. The damage was approximately €2000.00. A deduction of €800.00 was to be made from the claimant's pay and the records showed a deduction of €300.00

Cross-examination:

The witness agreed that there were negotiations with a company regarding a tender process. Regarding terms and conditions for riggers there were none and there was no specific contract. The witness explained that as they did not win a tender for a named company the work stopped. The company is no longer working on the contract with the named company.

The Tribunal heard evidence from the maintenance manager: He explained that the claimant worked under his supervision. The claimant was not a supervisor; he was part of the team. They had a meeting with employees to explain that there was a down turn in work and about redundancies. The claimant approached him circa 07th February about a letter dated 28th January. The claimant told him that he had not received the letter and asked for a copy of the letter. The claimant asked him to sign the letter.

Claimant's case:

The Tribunal heard evidence from the claimant. He told the Tribunal that he worked as a rigger. He did day-to-day installations and worked at heights installing antennae and antennae systems

There was a meeting in August 2006 regarding changes to their pay. They received €120.00 per day plus €36.00 subsistence. They were told that because of changes in the legislation it would be added to their pay. This meant that it would bring his pay into a higher tax band. Also there was ambiguity regarding travel arrangements regarding Dublin. There was general discontent among the workers.

He himself never got a contract of employment, and never got a handbook.

He asked SCW a few times about training, as he wanted to get to the level of a team leader. He would attend the training in his own time if necessary.

The claimant attended a meeting and they did not expect the reason for the meeting. They were told something to the effect; "look lads there is no work, sorry about that lads".

The claimant told the Tribunal "there was certainly enough work there to keep us going". He felt that the respondent just decided that "It was too much hassle" so the respondent decided to sub-contract the work.

The claimant gave evidence as to his loss.

Determination:

The evidence adduced by the respondent was insufficient to establish that the dismissal was due to redundancy. The Tribunal determine that the claim under the Unfair Dismissals Acts, 1977 to 2007, succeeds and that compensation be the most appropriate remedy, accordingly the Tribunal awards the claim the sum of €3,080.00, this being four weeks pay.

The claim under the Minimum Notice and Terms Of Employment Acts, 1973 to 2005, succeeds, accordingly the Tribunal awards the claimant the sum of €770.00, this being one weeks gross pay in lieu of notice.

No evidence was adduced with regard to the Organisation of Working Time Act, 1997, accordingly this claim fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)