

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE - claimant

CASE NO.  
UD824/2009

against

EMPLOYER

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. J. Revington SC

Members: Mr. B. Kealy  
Mr. F. Keoghan

heard this claim in Dublin on 14 October 2010 and 2 December 2010

Representation:

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Claimant(s):  
Mr. Richard Mogan, 78 Gresham House, Dublin 1

Respondent(s):  
No attendance or representation at Tribunal hearings

The determination of the Tribunal was as follows:-

The written claim stated that the claimant was a welder who had worked for the respondent company from 5 March 2006 to 17 September 2008 and that his gross weekly pay was €585.00. On 2 September 2008 the claimant was working at a Dublin development when he felt a pain in his back after lifting a railing. He finished work that day but the pain persisted. At 6.00 a.m the next morning he contacted his project supervisor (hereafter referred to as PS) and said that he was going to see a doctor.

A doctor (hereafter referred to as DCTR) saw the claimant and certified him as unfit to work. PS contacted the claimant the following day and asked him to come to work. The claimant duly faxed DCTR's certificate with the prescription for medication.

The claimant returned to work on 10 September 2008 but he continued to suffer from his back injury. He made his employer aware of this and attended with DCTR again. He was certified unfit to work until 26 September 2008. He informed his employer of developments.

The claimant received a letter from the respondent company in mid-September 2008. This letter was dated 30 July 2008 and gave him a written warning for not giving proper notice for taking days off. The claimant had never received this letter before nor had he been given any verbal warnings around the date of this letter.

A few days later (during the same week), the claimant received a letter from the respondent company dated 15 September 2008 informing him that his contract had been terminated. This letter referred to the respondent company's letter to the claimant dated 30 July 2008 and to numerous verbal and written warnings. The claimant denied that these had occurred.

The liquidator wrote to the Tribunal that the respondent company's file for the claimant did not contain any accident report and that the claimant had had a poor attendance record taking time off without notifying the respondent. However, the liquidator stated that he was not in a position to participate in the proceedings of the Tribunal as the liquidation had no funds available to discharge the incidental costs of attending and preparing for the hearing. He was not in a position to comment on the merits or the veracity of claims made by the claimant against the company.

In sworn testimony by the claimant, the Tribunal was told that the respondent had not accepted a medical certificate given by the claimant after his back injury in September 2008, that the respondent had wanted to finish the project as soon as possible and that this was why the claimant had been dismissed. Regarding the question of whether an accident report had been filed after the injury was sustained on 2 September 2008, the claimant stated that he had called PS (the abovementioned project supervisor) at 6.00 a.m. on 3 September 2008.

### **Determination:**

On the uncontested evidence of the claimant, the Tribunal has no alternative but to allow the unfair dismissal claim. In all the circumstances of the case the Tribunal finds compensation to be the appropriate redress to award. In allowing the claim under the Unfair Dismissals Acts, 1977 to 2007 the Tribunal deems it just and equitable to award the claimant compensation in the amount of €30,420.00 (this amount being equivalent to fifty-two weeks' gross pay at €585.00 per week) under the said legislation.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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