

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE – *claimant*

CASE NO.
MN18/2010
WT12/2010

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: Ms K T O'Mahony BL

Members: Mr J Hennessy
Ms S Kelly

heard this claim at Kilkenny on 17th January 2011

Representation:

Claimants(s): In person

Respondent(s): In person

The decision of the Tribunal was as follows:

Respondent's Case:

The respondent contended that he did not dismiss the claimant. There was no work prior to Christmas 2008. He said he would phone the claimant in the new year if work came in. The work arrangement had been casual and when he had work he employed the claimant. The employment began in November 2007 when the respondent employed the claimant to work for one week. He continued to employ the claimant for as long as he had work. There were occasions in 2008 when there was no work for the claimant.

The respondent issued payslips to the claimant in respect of holiday weeks but he didn't actually pay him the wages. He paid the claimant for the full week when a public holiday fell. They did not work on public holidays. The respondent did not dispute that he owed the claimant 11 weeks' wages, but he had no funds to pay him. He agreed that he had told the claimant that he would pay him from the sale of assets, but the Sheriff had taken the proceeds.

Claimant's Case:

The claimant contended that as he had not had employment for a month and could not claim social welfare benefits he finished the employment. He contended that the respondent owed him for eleven weeks wages, which included 15 days holiday pay and for the public holiday on June 2nd 2008. He was paid €300 for that week instead of his normal pay of €485 (net).

Determination:

The Tribunal heard evidence from the claimant that he left his employment as he had not had any work for a month. As the claimant resigned he is not entitled to payment in lieu of notice. Therefore, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fails.

The Tribunal awards the claimant €1,500 (one thousand five hundred euro) in respect of fifteen days holiday pay and €100 (one hundred euro) in respect of one public holiday under the Organisation Of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)