

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

-Claimant

CASE NO.
UD2539/2009
MN2374/2009
WT1076/2009

against
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. N. Russell
Members: Mr. J. Browne
 Mr. F. Dorgan

heard this claim at Waterford on 2nd March 2011

Representation:

Claimant: Ms Pauline Conroy, Belfield House, Claremorris, Co. Mayo

Respondent: J F Williams & Co, Solicitors, Main Street, Dungarvan, Co. Waterford

The determination of the Tribunal was as follows:

There was a dispute between the parties regarding the date of commencement of employment.

It was the respondent's case that the claimant was employed as a grounds man from June 2003. It was the claimant's case that he held this position since 2001. In any event both parties outlined the duties of the role to the Tribunal.

The respondent admitted that he did not provide the claimant with a formal written contract but the duties and hours of work were agreed verbally. The claimant was required to work 20 hours per week. As the respondent resides abroad for the majority of the year the claimant could be flexible about which days he worked if he so wished. The claimant stated that weather permitting he worked the same days each week.

The respondent gave evidence that from the time the claimant commenced employment there were issues with the claimant's work performance. He issued verbal warnings to the claimant throughout his employment on at least three different occasions. He warned the claimant that he could be dismissed if his work performance did not improve. Although the respondent was dissatisfied with the claimant's work performance the claimant continued in his position.

The claimant gave evidence that he performed all of the duties allocated to him and that he often attended on his days off to feed livestock. The claimant refuted that he had ever received warnings

from the respondent about his work performance or that there was a possibility he could be dismissed.

The respondent terminated the claimant's employment in July 2009. The respondent stated that on Friday, 3 July 2009 he discovered that a number of different materials had been burnt in the meadow. The respondent was irate and went to find the claimant to address the matter with him but the claimant had already left the property. The respondent subsequently telephoned the claimant on Sunday, 5 July 2009 and informed the claimant that he was dismissed. The claimant's colleague was dismissed on the same day. The claimant was replaced in his position one week later. Prior to the date of dismissal the respondent had last spoken with the claimant one year before. The respondent accepted that the claimant had an outstanding entitlement to payment in lieu of minimum notice. He presumed that the claimant had received his annual leave entitlements.

The claimant stated that he worked Thursdays and not Fridays and he was therefore not present on Friday, 3 July 2009 as stated by the respondent. He did not burn various materials in the meadow. The claimant confirmed receiving the telephone call from the respondent on Sunday, 5 July 2009 informing him that his services were no longer required. The claimant requested a reason for the dismissal and the respondent told him he was changing his system. On a further occasion the claimant asked the respondent to outline the reason for the termination of his employment but he was given the same reply. The claimant also wrote to the respondent requesting his minimum

The claimant gave evidence pertaining to loss and outlined an outstanding entitlement under the Organisation of Working Time Act, 1997.

Determination:

It is clear to the Tribunal from the evidence adduced at the hearing, that there was a complete absence of procedure in the dismissal of the claimant. The Tribunal finds the appropriate remedy to be compensation and awards the claimant the sum of €10,000 under the Unfair Dismissals Acts, 1977 to 2007.

The respondent conceded that the claimant has an outstanding entitlement to payment in lieu of notice. Accordingly, the Tribunal awards the claimant the sum of €622.80 (being the equivalent of four weeks' gross pay) under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The Tribunal also finds that the claimant is entitled to the sum of €467.10 (being the equivalent of fifteen days gross pay) under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)