

EMPLOYMENT APPEALS TRIBUNAL

Correcting Order

CLAIM OF:
EMPLOYEE

CASE NO.
UD2110/2009
WT566/2011

against
EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr R. Maguire, B.L.

Members: Mr D. Peakin
Ms. N. Greene

heard this claim at Dublin on 8th December 2010 and 26th May 2011

Representation:

Claimant : Warren Parkes, Solicitors, Unit 1, The Capel Building, Mary's Abbey, Dublin 7

Respondent : Oliver O'Sullivan & Co, Solicitors, Castlepollard, Co Westmeath

This Correcting Order should be read in conjunction with UD2110/2009.

This Order adds an appeal under the Organisation of Working Time Act, 1997 to the original Order.
It also inserts the following into the Determination.

Determination

The appeal under the Organisation of Working Time Act, 1997 falls.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

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The determination of the Tribunal was as follows:

Claimant's Case

The claimant commenced employment with the respondent as a lorry driver in early 2006. The respondent operated as a sole trader. At no time during that employment did he receive a contract of employment or written terms and conditions of employment. Regular payslips were also not a feature of this employment relationship. The claimant explained to the Tribunal that his weekly wages which were set at a daily rate also included allowances for fuel. That rate was based on time spent employed as distinct from load factors. There was no formal agreement between the claimant and the respondent on leave and holiday arrangements.

The witness spoke of a week's holiday he got paid for in the spring of 2009. However, he also worked and got his normal remuneration for that same week. His weekly income at times came in the form of bank drafts, cash, and cheques and was received from up to three sources all linked to the respondent. By the spring of 2009 the claimant was experiencing increasing difficulties in securing his full wages on time from the respondent. On occasions the respondent was aggressive and abusive towards him on that topic. By then the respondent had extra drivers and more trucks but had less work. Despite that situation at no time was the claimant placed on short time working notwithstanding letters sent to him in the autumn of 2008 flagging that that would be the case.

The witness also recalled an incident when he was stopped by the Gardai in the Waterford area and

his truck was impounded, as it was not properly taxed. This led him being at the receiving end of further abuse and criticism from his employer. He was talked of another unwelcome experience with the authorities and one of the respondent's trucks when he was stopped on the Naas Road. The truck he was driving at the time had certain irregularities.

In July 2009 the claimant was trying to organise two weeks' leave. When that full holiday pay did not materialise as expected the witness "was fuming" and decided he had taken enough abuse and ill treatment from his employer. Between the issues of holiday pay, underpayment and slow delivery of his wages, and the overall attitude and approach of the respondent, the claimant felt he had no other option but to involuntarily resign his job with the respondent. Besides there was no grievance procedure available in which to channel his complaints.

A brief standoff developed between the claimant and the respondent in relation to a detained truck. The witness was adamant that he neither hid that truck nor made the keys for it unavailable for the respondent. In an undated and requested letter to the respondent the claimant wrote that he left his employment due to stress and pressure. The issue over his holiday pay that arose on 24 July was "the final straw".

A former colleague of the claimant's and current employee of the respondent recalled a telephone conversation he overheard between those two men relating to wages. Both men "were roaring and shouting" with each other over issue.

Respondent's Case

The owner and proprietor of this haulage business accepted that the claimant had not been furnished with a contract or terms and conditions of employment. In undertaking managerial and driving duties the owner delegated administrative tasks including wages and holidays to his wife who was also an employee of the respondent. Wages were due on Thursdays and while the claimant wanted his money when they were due, it was normally Friday when he collected them. In taking responsibility for the taxation and other statutory obligations for his lorry fleet the proprietor commented that the drivers including the claimant shared as much responsibility for their maintenance for their upkeep as he did.

In dealing with employees remuneration the respondent attempted to keep wages and holiday pay separate. While the witness stated that he never paid anybody for doing nothing the claimant was nevertheless paid a full day's wage even if he only worked a half-day. Their holiday year almost coincided with the tax year. In July 2009 the claimant sought payment for twelve days holidays. The records of the respondent showed he had already received pay for those days spread throughout that year. When these two men met on 24 July differences emerged over holiday pay. The owner had a bank draft to pay the claimant for his wages but was not prepared to pay for his holidays in advance.

While on his way to Cork later that day the proprietor received a call from An Garda Síochána relating to the truck that the claimant had that day. He gained the impression that the truck had gone missing and that resulted in a letter to the claimant on 30 July regarding that issue. The owner was certain he did not receive a call from the claimant on 24 July relating to either the truck or the status of the claimant's employment. The proprietor added that the claimant was not justified at feeling annoyed by the treatment he received from his employer as he was "on a gravy train" all throughout his time with the respondent.

The owner's wife said there was an agreement with the claimant that his absences on Fridays would

be treated as leave days for which he got paid. For that reason she could not understand why he was complaining about that issue in July 2009. A record sheet for the claimant's attendance, wages, and holidays was produced together with two separate but contrasting set of payslips. The witness was unable to explain the reason for those contrasting payslips.

Determination

Having reviewed and considered the adduced evidence and documentation on this case the Tribunal is not satisfied there was holiday pay due to the claimant on 24 July 2009. This issue, according to the claimant, was the last straw in his troubled relationship with the respondent. However the Tribunal finds otherwise in that the claimant acted in a hasty and unreasonable way in terminating his employment. The claim under the Unfair Dismissals Acts, 1977 to 2007 falls.

This finding does not endorse or approve the respondent's input into this case. Its omission to furnish the claimant with his terms and conditions of employment is a breach of its statutory obligations. Proper and accurate records of employees leave entitlements need to be improved. Timely, correct and clear payslips for employees are to be issued in accordance with the Payments of Wages Act.

Sealed with the Seal

of the

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This _____

(Sgd.) _____
(CHAIRMAN)

