

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE - *claimant*

CASE NO.

MN2234/2009

WT1019/2009

UD2418/2009

against  
EMPLOYER - *respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
ORGANISATION OF WORKING TIME ACT, 1997  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. D. Winston  
Mr J. Maher

heard this claim at Dublin on 5th July 2011

Representation:

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Claimant(s) : Mr Tim Maher, James Maher & Co, Solicitors, 1 The  
Bookend, Essex Quay, Dublin 8

Respondent(s) : No appearance by or on behalf of respondent

### Summary of Evidence

The claimant gave direct evidence that he commenced working for the respondent company as a security guard in March 2007. He was based at an Industrial Estate in west Dublin where various businesses were located. He worked on a continuous basis until 5 October 2009 and earned €200 per week. At approximately 7.25pm on that evening as part of his duties he was checking a vehicle which was visiting a premises in the industrial estate. As he was attending to his duties another vehicle entered the estate. He informed the driver of this vehicle to wait as he attended to the driver of the first vehicle. The lady driver of the second vehicle then began to rev her vehicle and beeping the vehicle's horn. She also became abusive towards him shouting at him that he should know the premises she wanted to attend. She then drove her vehicle forward without

permission and exited the vehicle. He could smell alcohol from the driver and saw her staggering as she walked from the vehicle. He contacted his supervisor, (M) and reported the incident to him. He did not contact the Gardai as (M) told him not to do so. A meeting was then arranged for 7 October 2009 by (M) and the claimant informed (M) and (CM) who was the boss of the business of the version of events that occurred on 5 October 2009. (M) said that the company wanted to carry out an investigation into the incident. He met with management of the respondent company again on 15 October and 21 October to explain his version of events of the evening of 5 October 2009. He enquired from (M) to when he would be returning to work but was not given a date. He had no further contact with the company until 21 March 2010 when (M) told him that he might lose his job. He received no more feedback from the company and has never been provided with his P45. He has not been in employment with the respondent company since 5 October 2009.

The Tribunal heard further evidence that the claimant has not been in any employment since 5 October 2009. The claimant provided the Tribunal with character references from various businesses on the Industrial Estate where the claimant was employed which described him as competent, honest and diligent in his duties as a security guard. They also stated that he was co-operative, pleasant and professional in his commitment to his job.

No evidence was adduced on behalf of the respondent.

### **Determination**

The Tribunal is satisfied that both parties were properly notified of the hearing. The Tribunal is of the view from the evidence given by the claimant that no proper investigation was conducted by the respondent company into the incident on the evening of 5 October 2009. The claimant was left in limbo viz a viz as to whether he was still employed by the respondent company. The Tribunal notes that the character references provided to the claimant from various businesses on the site where the claimant was employed, indicated that they were more than happy with the courteous manner in which he performed his duties. The Tribunal finds that the claimant was unfairly dismissed and awards compensation in the sum of €17,400.00 under the Unfair Dismissals Acts 1977 to 2007.

The Tribunal also awards the claimant the sum of €400.00 being the equivalent of two weeks pay under the Minimum Notice and Terms of Employment Acts 1973 to 2005. Furthermore the Tribunal awards the claimant the sum of €400.00 in satisfaction of outstanding holiday pay owing under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

