

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE

**-claimant**

CASE NO.  
UD1581/2009  
MN1557/2009

WT670/2009

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: Ms N. O'Carroll-Kelly BL  
Members: Mr M. Noone  
Ms. N. Greene

heard this claim at Dublin on 27th August 2010

### Representation:

Claimant: Ms Lisa Maher BL instructed by Ms Karen Costello  
Solicitor of Byrne Carolan Cunningham, Solicitors, Oak House, 39/41  
Mardyke Street, Athlone, Co. Westmeath

Respondent: In person

### **Background:**

The claim under the Organisation of Working Time Act, 1997, was withdrawn at the outset of the hearing. The respondent company manufactures steel. The claimant was a fabricator-welder.

### **Respondent's case:**

The Tribunal heard evidence from the owner of the Respondent company. He told the Tribunal that the claimant received his proper notice. The selection process for redundancy was last-in, first-out, but some of the employees were specific to contracts that the company had with customers. The company began letting employees go in 2009. The claimant was "probably" in the first batch of employees to be let-go. The company now has eight employees, five of which are apprentices. The witness explained to the Tribunal what employees were left in the company and what their work was.

During cross-examination the witness stated that they put all of the employees on notice; one month before they started the redundancies they told the TEEU. The claimant was in the first batch of

redundancies. The selection was based on LIFO excepting the employees who were specific to contracts. Nobody took over the claimant's role, which was a fabricating welder role.

The witness answered extensive questions of the Tribunal.

The Tribunal heard evidence from a witness for the respondent. She explained that the claimant was on sick leave for three weeks at the end of his employment and he was sent his form p45 whilst he was on sick leave. He did not receive notice.

**Claimant's case:**

The claimant explained his background and how he came to be employed with the Respondent company.

He was out on sick leave only once and this was for three weeks circa 15<sup>th</sup> March 2009. After two weeks he received his p45. He did not expect this to happen whilst he was out sick.

A few weeks before the redundancy the owner had told him that there would be work for him.

The claimant was cross-examined by the Respondent.

The claimant answered questions of the Tribunal.

**Determination:**

The claim under the Organisation of Working Time Act, 1997, was withdrawn at the outset of the hearing, accordingly that claim is dismissed.

The Tribunal determine that the selection process for redundancy was flawed and unfair. The claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and the Tribunal awards the claimant the sum of €5,000.00, as compensation, this being the most appropriate remedy in this case.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, succeeds and the Tribunal awards the claimant the sum of €579.00, this being one week's gross pay as compensation in lieu of notice.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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