

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

EMPLOYEE *-claimant 1*

EMPLOYEE *-claimant 2*  
MN1471/2010

EMPLOYEE *-claimant 3*

EMPLOYEE *-claimant 4*

CASE NO.

UD1538/2010

MN1470/2010

UD1539/2010

UD1540/2010

MN1472/2010

UD1541/2010

MN1473/2010

Against

EMPLOYER *-respondent 1*

EMPLOYER *-respondent 2*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B. L.

Members: Mr. M. Carr  
Ms E. Brezina

heard this claim at Dublin on 28th September 2011

#### **Representation:**

Claimant: Mr. Joe Donnelly, Divisional Organiser, Mandate Trade Union,  
O'Lehane House, 9 Cavendish Row, Dublin 1

Respondent: No appearance or representation on behalf of

#### **Claimant's Case**

The claimant's all worked for the respondent – a shoe shop. The owner of the respondent retired and his son took over the day-to-day running of the business. The respondent issued the claimant's with a document stating that he wanted to reduce all the employees' hours

and wages. The claimant's attempted to set up a meeting to discuss the proposed wage and hours but the respondent refused. An industrial dispute ensued but was resolved by the respondent agreeing to roster the staff for a specific amount of hours over the prescribed amount of days to allow them to claim Social Welfare. This arrangement continued until the respondent started rostering staff for the same amount of hours but over 4 days thus disqualifying them from claiming Social Welfare. The respondent also imposed new duties on the staff and when they refused another hour was deducted from their working week. The situation culminated in the respondent issuing a document to the staff instructing them to either sign the new Terms and Conditions of Employment or they are effectively dismissing themselves.

The respondent had two shops, both shops closed in June 2010 and only one shop re-opened in November 2011. The staff alternated working in both shops. When the shop re-opened it was trading under a new name and company although the business is the same, the premises are the same, the customers are the same and the Directors are the same.

All four claimants' gave evidence of Loss and the fact that they did not receive their Minimum Notice entitlement.

### **Determination**

The Tribunal is satisfied that the respondent was on notice of the hearing. The claimants gave uncontroverted evidence of their dismissal. As the respondent failed to attend the hearing and discharge the onus placed on it to establish that the dismissal was not unfair the Tribunal, applying subsection (6) of section 6 of the Unfair Dismissals Act 1977, deems the dismissal unfair.

#### ***Claimant 1***

The Tribunal find that the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and awards the claimant €1,644.44 as compensation under the Acts. The claimant gave evidence of his Loss and informed the Tribunal that he was on disability benefit from the date of his dismissal due to him suffering a heart attack and was unavailable for work from that time on. In the circumstances the Tribunal can only award the claimant the minimum compensation allowable under the Act of 4 weeks' pay as shown above. The Tribunal took into consideration the submission of the claimant's representative and the *Liz Allen v Independent Newspapers* [2002] 13 ELR 84, Newspapers case. The Tribunal has no jurisdiction to award compensation for personal injuries.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails as the claimant was unavailable for work in the period post his dismissal.

#### ***Claimant 2***

The Tribunal find that the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and awards the claimant €48,854.08 as compensation under the Acts.

The Tribunal allows the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and awards the claimant €4,441.28 being the equivalent to 8 weeks' notice.

***Claimant 3***

The Tribunal find that the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and awards the claimant €19,905.05 as compensation under the Acts.

The Tribunal allows the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and awards the claimant €3,884.00 being the equivalent to 8 weeks' notice.

***Claimant 4***

The Tribunal find that the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and awards the claimant €14,755.90 as compensation under the Acts.

The Tribunal allows the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and awards the claimant €359.90 being the equivalent to 1 weeks' notice.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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