

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE-*Claimant*

CASE NO.

RP2286/2010
UD1702/2010

WT760/2010

MN1652/2010

Against

EMPLOYER-*Respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath, B.L.

Members: Mr J. Horan
Mr T. Brady

heard this claim at Dublin on 15th December 2011

Representation:

Claimant: Mr Shane Healy, Healy O'Connor, Solicitors, 77 Sir John Rogerson's Quay, Dublin 2

Respondent: In person

The determination of the Tribunal was as follows:-

At the outset of the hearing the claimant withdrew his claims under the Redundancy Payments Acts, 1967 to 2007 and Organisation of Working Time Act, 1997.

Determination

The Tribunal has given careful consideration to the evidence adduced. The claimant makes the case that he was constructively dismissed by reason of the inability of his employer to continue paying his wages. At this point in time in early January 2010 the claimant had already been on short time have been reduced from a five day week to a three day week since early 2009. The Tribunal finds that the claimant acted well within his rights to terminate his employment at this time.

However, the Tribunal note that the claimant in fact took his redundancy at this time which he is entitled to do when he had previously been placed in a short time scenario. An employee who claims and receives a redundancy payment in respect of lay off or short time is deemed to have voluntarily left his/her employment and therefore not entitled to notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005. Accordingly, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 is dismissed.

The claimant has not been able to demonstrate any actual loss and in these circumstances the Tribunal can only award 4 weeks compensation at €300.00 per week making an award of €1,200.00 under the Unfair Dismissals Acts, 1977 to 2007, pursuant to section 6(a)(ii) of the Unfair Dismissals (Amendment) Act, 1993.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)