

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE
- *Claimant*

MN1288/2010
WT548/2010
UD1332/2010

Against

EMPLOYER
- *Respondent*

EMPLOYER
- *Respondent*

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 P. McGrath

Members: Mr. M. Flood
Mr F. Keogh

heard this claim at Dublin on 3rd November 2011

Representation:

Claimant(s) : Ms Oonagh McCormack, Eoin O'Connor & Co, Solicitors, 16
South Main Street, Naas, Co Kildare

Respondent(s) : Mr Warren Parkes, Warren Parkes, Solicitors, Unit 1, The
Capel Building, Mary's Abbey, Dublin 7

Respondents Case:

Evidence was given on behalf of the respondent companies outlining details of the different divisions of the business. JD told the Tribunal that he had a good working relationship with the claimant and indicated that he was the main point of contact for the claimant. The claimant was contracted to a third party company involving a presence on construction sites. He agreed the claimant was a reliable and professional employee. JD told the Tribunal that he

telephoned the claimant regularly requesting he come in to the office following receipt of a letter from the claimant's solicitor. He was unable to confirm the dates he received the correspondence and the dates when he contacted the claimant. He told the Tribunal that he was unaware the claimant was not being paid his correct wages and rejected that the claimant was dismissed from employment.

Claimants Case:

The claimant gave evidence of commencing employment with the respondent company initially on a part time basis in December 2008 but full time from around May 2009 as a Health and Safety Officer. The role involved site inspections and the preparing of health and safety statements for clients of the respondent company. His pay when part time was €250 and when he became employed full time his pay was agreed as €600 per week. Although he worked full time his pay remained at €250. The claimant gave evidence of contacting the Operations Manager requesting his correct pay on a number of occasions. He told the Tribunal that he continued to work and carry out his duties for the respondent company's although he was not being paid the correct wages. He requested a contract of employment but was never given one. He told the Tribunal that in February 2010 he received a phone call from a site manager DE asking if he was still working for the respondent and informed him that another individual had turned up at the site that morning saying they were replacing the claimant.

Determination

The Tribunal has carefully considered the evidence adduced before it in the course of this hearing.

The claimant had demonstrated himself to be an extremely hard working, competent and conscientious employee of the respondent company. He commenced his employment in late 2008 taking up a position of Health and Safety Officer conducting inspections and preparing safety statements.

Initially the claimant was employed on a part time basis but subsequently took on a full time position. There was some confusion as to who the claimant's employer was. The only respondent witness available to give evidence described himself as an employee of the group of companies. The umbrella title being made up of different legal companies, carrying out the same or similar work and operating from the same premises at Capel Street. The claimant had no way of clarifying which company he in fact worked for and narrowed down the field to three possible companies which have all been named as respondents which make up the group as described by the respondent witness.

The claimant's employment came to an end on or about the 22nd of February 2010. This followed a protracted period of employment where the employer requested the claimant's attendance at a site but failed to pay him. It is not clear if this was an administrative error or an oversight. The claimant went on to give evidence that he was being replaced in the company and that not one person in management confirmed or denied this fact. In fact it seems that management simply opted not to deal with the claimant at all and despite having been written to by the claimant's solicitor on the 9th of February 2010 wherein the solicitor seeks the claimant's wages to be back dated and paid from the 27th of December 2009.

The Tribunal can find no rational explanation for the breakdown in the relationship between the parties. What is clear is that the claimant was not at fault. He followed instructions and turned up for work. When he queried the fact that he wasn't getting paid nobody seems to have addressed this issue. The respondent witness accepts he personally got written communication from the claimant about this. His response was inadequate in all the circumstances.

Ultimately the Tribunal finds the claimant to have been badly treated and unfairly dismissed. The claimant has mitigated his losses and has recently secured alternative employment. The claimant worked for one year on a part time basis since his employment with the respondent was terminated. The Tribunal awards the claimant €16,500 under the Unfair Dismissals Acts, 1977 to 2007.

The claimant is further entitled to be paid €600 being the equivalent of one week gross pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

There was no evidence adduced in relation to the claim under the Organisation of Working Time Act, 1997 therefore the Tribunal dismiss this claim for want of prosecution.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)