

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

claimant

RP2361/2010
UD1762/2010
MN1710/2010

Against

EMPLOYER

first named respondent

EMPLOYER

second named respondent

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr. L. Tobin
Mr J. Jordan

heard this claim at Dublin on 18th January 2012

Representation:

Claimant(s): Mr. Liam Bell BL instructed by Mr John Nolan, John Nolan & Company,
Solicitors, 11 Parliament Street, Dublin 2

Respondent(s) :Mr. Carl McCabe, Liquidator, Ferris & Associates, 27 Upper Mount Street,
Dublin 2 on behalf of the first named respondent

No attendance by or on behalf of the second named respondent

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant told the Tribunal that he commenced employment in 2001. From August 2005 to June 2008 the manager RF paid him in cash; he was not given wage slips. The claimant worked as a sales assistant initially and for the last few years he was assistant manager. The first named company was liquidated in January 2010.

On Tuesday he received a telephone call from RF that he was in the UK buying merchandise. RF returned on Wednesday and he told the claimant that everything was okay. On Wednesday and Thursday the shop was closed. On Friday he went to the manager's house to collect his wages. He received a statement from the manager which WS drafted that all employees would be working again. He was informed on the following Monday the 8th February 2010 that he was being dismissed and he was given a P45 dated the 20th January 2010. He was told that the shop was going to reopen and he was not in the plan. The position is still available. The respondent had no disciplinary or grievance procedures in place. He received wages for two weeks that he did not work.

During his employment he relayed an incident which occurred while he was in work. He received a telephone call that his wife was ill and he had to leave the shop immediately. He forgot to ring in the money in the till and this occurred a year prior to his dismissal. He worked in the shop on his own and dealt with wages and customers. He and the manager RF did not communicate with each other.

After his employment was terminated he obtained alternative work in March 2010 for a few weeks. He obtained work for two months at Christmas 2011 and the previous Christmas 2010 he worked for four months at a lesser rate of pay than he previously earned. He has been unable to find a full time job since his dismissal and he has worked almost a year in total. He has endeavoured to find full time work.

Respondent's Case

The liquidator on behalf of the first named respondent told the Tribunal that this company was liquidated on the 26th January 2010. He did not know who employed the claimant from August 2005 to June 2008. A transfer of undertaking took place on the 13th January 2010. The claimant was made redundant and the remainder of the employees were re-employed by the second named respondent.

Determination

There was no appearance on behalf of the second named respondent in this case. However, there was an appearance on behalf of the liquidator for the first named respondent from which the undertakings transferred to the respondents. The Tribunal having carefully considered oral and documentary evidence tendered by and on behalf of the claimant accepts his assertion that he was summarily dismissed for no valid reason on the 8th February 2010. There was no right of appeal afforded to him and the Tribunal was not provided with any other information concerning the dismissal. In the circumstances the Tribunal finds that the dismissal was unfair. The Tribunal heard that the claimant endeavoured to seek employment after he was dismissed. He did receive temporary employment over broken periods amounting to approximately twelve months however he was paid approximately €200.00 per week less than in his employment with the respondent. In the circumstances the Tribunal makes an award of €35,500 under the Unfair Dismissals Acts 1977 to 2007. The claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Redundancy Payment Acts 1967 to 2007 were not

pursued and therefore no awards are being made under these Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

