

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE

CASE NO.  
UD1196/2010  
MN1156/2010  
WT494/2010

against

EMPLOYER

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: Mr. E. Murray

Members: Mr. D. Hegarty  
Ms. H. Kelleher

heard this case in Cork on 18 October 2011 and 14 December 2011

Representation:

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Claimant(s):

Mr. Fergus Appelbe, Appelbe & Company, Solicitors,  
7 South Mall, Cork

Respondent(s) :

Ms. Eileen Hayes, PJ O'Driscolls, Solicitors,  
41 South Main Street, Bandon, Co Cork

The determination of the Tribunal was as follows:-

## Background

The Claimant in this case was a thirty-six year old Hungarian national who was employed as a general operative by the Respondent from the 20<sup>th</sup> of October 2008 until approximately the 30<sup>th</sup> of April 2010.

Evidence was given on behalf of the Respondent by the Respondent himself who described that he was a farmer who bred and sold horses. From time to time he would have between forty and sixty horses in his yard. On a normal day one would commence work at 8.00 a.m., feeding, mucking out, exercising and riding out the animals, working on young horses and “breakers”. The yard was very busy and there was always work to be done. He indicated that he had two employees at the relevant time, the Claimant and a fellow Hungarian national (AM).

He had a very good relationship with the Claimant. The Claimant’s role was that of a general operative. He was not involved with the horses and was engaged in manual labour and cleaning work around the farm.

The Claimant was due to go on holidays for two weeks terminating on the 14<sup>th</sup> of April 2010. He did not return to the yard until the 30<sup>th</sup> of April. The reason that he gave was that he had been delayed in Hungary by the volcanic ash cloud that had been impeding aviation at that particular time and that he ultimately had to return overland.

The Respondent said that at no time did he contact him personally to explain the situation. His absence from the yard created considerable extra work for the other employees. He acknowledged that the Claimant had communicated with his colleague AM, but the Respondent said that it was communicated to him that he the Claimant was required to speak directly to his employer, the Respondent.

The Respondent said that through AM and another Hungarian national whom the Claimant had contacted that if he didn’t make personal contact with the Respondent that he could take it that he was “on notice”.

The Claimant gave evidence on his own behalf through an interpreter. He said that he was unable to return to Ireland because of difficulties with flights due to the volcanic ash cloud. He indicated that because of his poor English that he had communicated with his co-worker and another Hungarian friend who lived in Bandon, and he relied on them to notify his employer. Both of these persons advised the Respondent of his difficulty and inability to return.

He understood however from AM and the other friend, that by the 18<sup>th</sup> of April his job was gone because of his non-return but there was absolutely nothing that he could have done to get back from Hungary at that particular time.

## Determination

Having considered the evidence of all parties and having acknowledged that the absence of the Claimant from the Respondent's yard created considerable difficulties for the Respondent, nonetheless the Tribunal is unanimously of the view that the Respondent acted precipitously in the circumstances, and that the Claimant was genuinely prevented from returning to work on time by the presence of the volcanic ash cloud.

The Claimant did communicate with his employer through third parties but was remiss in not speaking directly to the Respondent and has to accept a certain amount of responsibility himself in the matter.

Nonetheless, the Tribunal takes the view that the Claimant was unfairly dismissed and that compensation is the appropriate remedy. Consequently, it makes an award of €1000.00 in this regard under the Unfair Dismissals Acts, 1977 to 2007.

In addition to the foregoing, the Tribunal upholds the Claimant's claim under the Minimum Notice and Terms of Employment Act and makes an award in this regard in the sum of €609.82 (this amount being equivalent to two weeks' gross pay at €304.91 per week).

The claim under the Organisation of Working Time Act, 1997, fails because the Tribunal found the evidence inconclusive in this regard.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)

