

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD955/2010

WT392/2010

MN900/2010

against

EMPLOYER

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: Mr L. Ó Catháin

Members: Mr D. Hegarty

Mr J. Flavin

heard this claim at Cork on 5th July 2011 and 5th October 2011

Representation:

Claimant:

Mr. Paul Derham, Daly Derham Donnelly, Solicitors,
Florence Buildings, 1a Washington Street West, Cork

Respondent:

Frank Nyhan & Associates, Solicitors, 11 Market Square,
(Opposite Courthouse), Mallow, Co. Cork

Respondent's case

The respondent operates a car sales and service/repairs business and employed the claimant as a Service Manager since 2000. The Claimant was dismissed 16th November 2009 after an investigation uncovered certain work being carried out in the work shop without monies being paid to the respondent. The claimant and two other employees were given the opportunity to resign in order to avoid being dismissed. The claimant refused to resign but the other two employees did resign. The claimant remained on suspension with pay for a further 4 weeks but was ultimately dismissed.

The respondent was satisfied that the claimant had received cash payments for work carried out on the respondent's premises during his normal working day. It was common case that the

claimant operated a small manifold repair business from his home during his own time. However the respondent believed that the manifolds he repaired and sold belonged to the respondent and that the claimant had taken them without permission.

The respondent did not give the claimant notice of his dismissal or pay him in lieu of such notice but summarily dismissed him for gross misconduct. However, notwithstanding this the respondent held that any notice and holiday pay due to the claimant was covered by the four weeks he was on suspension with pay.

Claimant's case

The claimant stated that he had carried out certain repairs in the respondent's workshop as favours to friends and family. However this work was always done outside of his normal working day and with the consent of his Manager. He denied being part of a three-way-split in relation to work that should have been processed through the respondents system.

In relation to his manifold repair business, the claimant stated that he did not take the manifolds that were returned to the respondent but sourced them elsewhere.

Determination

There were clear contradictions in the evidence of the parties. Having carefully considered the evidence adduced the Tribunal finds that, on balance, the disciplinary procedures adopted by the respondent were defective. Therefore, the Tribunal finds that the claimant was unfairly dismissed. However, given the claimant's contribution to the situation and in all the circumstances, the Tribunal awards the claimant €3,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal also awards the claimant €5,928.48 in respect of minimum notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Furthermore The Tribunal awards the claimant €3,162.00 in respect of unpaid annual leave under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)