

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE -*Claimant*

CASE NO.
UD1768/2010
MN1726/2010
WT790/2010

against
EMPLOYER -*Respondent*

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: Ms D. Donovan B.L.

Members: Mr J. Browne
 Ms S. Kelly

heard this claim at Wexford on 16th February 2012

Representation:

Claimant: Mr. James Kavanagh B.L., instructed by O'Brien & Associates, Solicitors,
 Mill House, Henry Street, Limerick

Respondent: Peninsula Business Services (Ireland) Limited, Unit 3,
 Ground Floor, Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:

The claimant was employed with the respondent company as an international lorry driver from October 2008.

The claim before the Tribunal was one of constructive dismissal. The claimant stated that he sometimes worked 60 hours per week, instead of the 45 hours that he was supposed to work. At times he was forced by the company to drive these additional hours and he was told that if he did not agree to it, he could leave their employment.

In or around February 2010 the claimant's wages were reduced by €10 per day. The witness for the respondent company confirmed that wages were reduced at that time due to the economic situation. The reason for the reduction in pay was explained to all of the staff.

The claimant was in a new personal relationship in Ireland. In or around early April 2010 he had requested to work in Ireland or to have his breaks scheduled for Ireland. A witness for

he company stated that it was not possible for the company to facilitate the claimant's request in this regard.

The claimant sought leave for a particular weekend during April but his request was denied. On 23 April 2010, when he discovered his request had been denied, he became irate, abandoned the lorry in England and resigned from his employment.

During cross-examination the claimant accepted that the respondent had a grievance procedure and that he could have brought a grievance by speaking with one of the directors of the company.

The claimant secured new employment within two days of resigning from his employment. He earned in or around €700 per week, for fewer hours than he had worked with the respondent.

When asked to provide details on the number of times that he had worked excessive hours the claimant recalled that there were three occasions. He also referred to a date in October 2009. The witness on behalf of the company stated that the digital tachograph for that particular date showed that there was no record of excessive hours either on that date, nor on any other date during October 2009. The witness for the company had analysed the period from 23 October 2009 to 13 April 2010 and found that on only one occasion in that period the claimant had worked excessive hours.

The witness stated that a lorry driver is legally obliged to stop after 4.5 hours for 45 minutes and the digital tachographs showed that the claimant did that. He had never had fines for breaches of this obligation.

Determination:

Having considered the evidence adduced at the hearing the Tribunal finds that the claimant left his employment with the respondent because the location at which the respondent reasonably required the claimant to take his breaks between working trips no longer suited the claimant. Accordingly the claimant was not constructively dismissed and the claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Accordingly, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, must fail.

The Tribunal does not have jurisdiction to deal with the claim under the Organisation of Working Time Act, 1997 as the claim pertained to rest periods.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)