

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE
(*claimant*)

CASE NO.
UD1727/2010
MN1678/2010
WT770/2010

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: Mr M. O'Connell B.L.

Members: Mr. N. Ormond
Ms. E. Brezina

heard this claim at Dublin on 12th January 2012

Representation:

Claimant(s) : Kevin Tunney, Solicitors, Millennium House, Main Street,
Tallaght, Dublin 24

Respondent(s) : No attendance by or on behalf of respondent

The determination of the Tribunal was as follows:

The Tribunal noted that the liquidator, who had not been put on notice of hearing, had no objection to the hearing going ahead without their attendance.

The claimant's representative told the Tribunal that the claimant's payslip of 12th June 2009 showed a net wage of €432 (Gross €478.02).

Giving evidence, the claimant stated that he had been hired by the respondent on a five day week basis. The line of business was attic insulation. There was a pay cut of 10% which was not in dispute. The claimant was responsible for setting up jobs as he was the Foreman. There was no choice given in relation to the three day week which happened in mid 2009. The claimant's payslip of 19th June 2009 amounting to €328 was for a three day week. Employees were told to work five days and got paid for three. The claimant was told he would be "fixed

up” when things got better. When the claimant questioned why they were not getting paid as he knew there was money coming in, he was undermined and isolated. In January 2010 when the claimant was not getting paid, he was told he would get his money. On the first day back in January, staff were told they would get €150 for the week and a letter for social welfare. The claimant told the respondent that was no good to him and he did not take it. The Foreman was told to tell the claimant to either stay or go.

A letter was sent to the claimant telling him the respondent accepted his resignation, when he never said he was leaving. The claimant was out of work for three months and is paid €1,529 per month in his new employment. The claimant’s representative gave the Tribunal details of the claimant’s on-going loss. The claimant did not receive notice.

Determination

Having heard the evidence on the part of the claimant, which was uncontested by virtue of the respondent’s decision not to attend, the Tribunal is satisfied that working conditions deteriorated significantly over the course of the claimant’s final year of employment. Cost saving measures were introduced unilaterally.

The respondent did not seek to negotiate with the claimant or others affected. The Tribunal is satisfied that when the claimant sought to query the changes, he was isolated and undermined to a degree which made it difficult for him to continue in employment. His decision to leave the employment on 15th January 2010, the Tribunal accepts was not unreasonable and it amounted to a constructive dismissal.

Of particular note was the fact that he was being offered €150 for three full weeks work. His reluctance to accept this was greeted with a letter from the respondent referring him to the Department of Social Protection.

Accordingly, the Tribunal accepts that the dismissal in this case was unfair. The Tribunal awards the sum of €17,251.88 this comprises:

- a) €5,736.24 (12 weeks x €478.02 for period of unemployment subsequent to termination).
- b) €11,515.64 (ongoing loss of €125.17 per week x 92 weeks).

As no notice was given to the claimant, his claim under the Minimum Notice Acts also succeeds and the claimant is awarded the sum of €956.04 being 2 weeks gross pay. No evidence was given in support of the claim for compensation under the Organisation of Working Time Act. Accordingly the Tribunal makes no award.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)