

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD2073/2010

MN2025/2010
WT922/2010

- claimant

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 G. Hanlon

Members: Mr T. O'Grady
Mr O. Nulty

heard this claim at Drogheda on 28th June 2012

Representation:

Claimant(s): Mr Ciaran O'Mara
O'Mara Geraghty McCourt
Solicitors,
51 Northumberland Road, Dublin 4

Respondent(s): No appearance or representation

The determination of the Tribunal was as follows:-

There was no appearance by or representation on behalf of the respondent. A liquidator contacted the Tribunal in advance of the hearing to state that he had been notified of the hearing and that the claimant had been an employee of a company to which he had been appointed liquidator on June 25th 2012. The claimant's representative stated that the claimant was employed by the respondent (named above) and not the company referred to by the liquidator and had a contract of employment to that effect. The claimant's representative stated that they wished to proceed with the case as listed.

The claimant, an Italian national, gave evidence that he commenced his employment with the respondent in June 2009. He was employed as a Barista at the respondent's coffee shop. He

was paid by cash. He did not receive a payslip. After six months he began asking for a payslip, but never received one. The respondent told him that everything was fine, but the claimant later discovered that no PAYE or PRSI was being paid on his behalf.

In September 2010 the claimant went on holidays for two weeks. Prior to leaving there had been a large electricity bill at the café. Every evening the claimant kept back €100 to pay the bill at the end of the week; €600 per week. He understood that another employee did this while he was away. When he returned he took the envelope to the post office to pay the bill. There was only €500 in the envelope. The respondent looked for the receipt when he arrived and asked him why €600 had not been paid. Another employee, also Italian, said that there was €600 in the envelope. The till rolls were checked and it was resolved that there was only €500 in the envelope.

Outside the café the claimant argued with the other employee in Italian about why she had said there was €600 in the envelope. When he went back in the respondent said that people had phoned about the claimant shouting at the employee. He said that he wanted the claimant to leave immediately. He was not paid any notice. The claimant gave evidence of his loss.

Determination:

Based on the uncontested evidence of the claimant the Tribunal finds that he was unfairly dismissed under the Unfair Dismissals Acts, 1977 to 2007. Taking all matters into account the Tribunal awards the claimant €42,000 (forty-two thousand euro).

The Tribunal awards the claimant €540.00 (five hundred and forty euro) in respect of one week's pay under the Minimum Notice And Terms Of Employment Acts, 1973 to 2005.

The claim under the Organisation of Working Time Act, 1997, was withdrawn during the hearing.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)