

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

- *claimant No 1*

and

EMPLOYEE

- *claimant No 2*

CASE NO.

UD555/2011 RP773/2011
MN595/2011 WT217/2011

UD556/2011 RP774/2011
MN596/2011 WT218/2011

against

EMPLOYER - *respondent*

and

EMPLOYER - *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 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 C. Egan B.L.

Members: Mr T. Gill

Ms H. Murphy

heard this claim at Galway on 6th November 2012

Representation:

Claimant(s) : Mr Kevin Callan BL instructed by Ms Shona Marry, Dorothy Walsh,
Solicitors, 44 Laurence St, Drogheda, Co Louth

Respondent(s) : Mr Kieran Edwards, Accountant, Coolata, Lower Friars Walk, Cork

The claims under the Redundancy Payments Acts 1967 to 2007 were withdrawn by the claimants representative at the commencement of the hearing.

Respondent's Case

(D) for the respondent gave evidence that the company is involved in mens fashion business. The company had four employees including claimant No 1 employed in their Galway outlet and traded there for 1.5 years. The company rented a premises from (H) and in January 2011 without warning discovered that the locks were changed on the premises and they could no longer gain access to the premises. (D) told the Tribunal that (H) was in financial difficulties and the premises remained closed. The issue was out of the respondent's control and the situation had been forced upon them. The company attempted to secure an alternative premises in the Galway area but was not successful in its attempts. Claimant No 1 who had been employed as a senior sales man was offered alternative employment in the respondent's Limerick premises but this offer was not taken up by claimant No 1. (D) denied that claimant No 1 was employed as a manager. He gave further evidence that all employees including claimant No 1 were provided with contracts of employment.

The witness gave further evidence that claimant No 1 visited the respondent's Cork premises on 30 March 2011 and a meeting took place involving the witness, claimant No 1 and another person for the respondent known as (K). The witness gave evidence that he tried to resolve the matter and an offer of €2750.00 was made to claimant No 1. Claimant No 1 declined this offer and the matter remained unresolved. The witness denied that the company employed 12/13 people in the Galway premises. He accepted that the Galway premises had previously closed for a three week period prior to the closure in January 2011 but denied that employees were left without their wages.

The witness gave further evidence that claimant No 2 was employed in a part-time capacity and when the Galway premises was closed by the landlord claimant No 2 was offered alternative employment at the respondent's Limerick premises. This was a verbal offer and was not made in writing. Claimant No 2 did not accept this offer. The Galway outlet did not re-open and the claimant was supplied with his P45.

Claimant No 1 Case

Claimant No 1 gave direct evidence that he commenced working for the respondent on 21 October 2008. He was initially employed as a sales person and was promoted to assistant manager after 1.5 months. In January 2009 he was promoted to the position of manager following the departure of employee (J) as manager. His net salary increased by €150 per week following this promotion. He gave evidence that he never signed or saw a contract of employment. He requested a contract of employment following his promotion to manager but did not receive one. He told the Tribunal that the respondent employed 12/13 people from the Galway premises 5 of whom worked in the shop and the remainder worked away from the shop. He gave evidence that over time staff left or were fired and the respondent went from being overstaffed to understaffed. In his role as manager he never issued any contracts of employment to staff.

Following the closure of the Galway premises in December 2010 he contacted (D) and (K) from the respondent company and was told to await further instructions. The Galway shop remained closed over Christmas 2010 and re-opened after Christmas. It closed again overnight without warning after 2.5 weeks. Following this closure there was no communication from the respondent and staff were not kept informed. He made a number of efforts to contact

management in Cork but his calls were not returned. Eventually, in March 2011 he travelled to Cork to discuss the situation and met with (D) and (K) from the respondent company. (K) offered him a cheque for €1600.00 and said that if he (the witness) pursued any further action he would be met with a brick wall. The witness rejected this offer as he did not want to haggle over his entitlements. He told the Tribunal that he never received an offer of alternative employment in Limerick.

He gave further evidence that since the termination of his employment he borrowed €500 and started up a company in April 2011. He opened a shop in mid May 2011 and details of his loss since the termination of his employment with the respondent company were handed into the Tribunal.

Claimant No 2 Case

Claimant No 2 gave direct evidence that he commenced working for the respondent on 1 January 2009. He was employed in a sales position working 5 days per week earning €460.00 per week. Just before Christmas 2010 his hours were reduced drastically without any notice or consultation. He gave evidence that he was never issued with a contract of employment and never received any payslips. Following the closure of the Galway shop he heard nothing from the company. He was not offered any alternative employment and he subsequently received his P45 approximately one year after the closure of the Galway business. He told the Tribunal that the date of termination of his employment contained on his P45 is 27 February 2011. Details of his loss since the termination of his employment with the respondent were submitted to the Tribunal.

Determination

The Tribunal carefully considered the evidence adduced by the parties. It appears to the Tribunal that the closure of the respondent's Galway premises was brought about by the actions of the landlord of the premises and was not the fault or responsibility of the respondent. However the Tribunal finds that there was a lack of communication from the respondent following the closure of the premises. The Tribunal is of the view that the onus rested with the respondent to communicate fully with all employees following the closure of the premises and is satisfied this did not happen.

The Tribunal heard conflicting evidence in relation to whether or not contracts of employment were issued to the claimants. In that regard the Tribunal notes that no documentation was provided to the Tribunal supporting the respondent's contention that contracts of employment were issued to the claimants. The Tribunal heard further conflicting evidence in relation to whether or not alternative job offers at the respondent's Limerick premises were made to the claimants. The Tribunal notes that no such offers were made in writing to the claimants.

In all the circumstances the Tribunal finds that both claimants were unfairly dismissed and makes the following awards.

In respect of claimant No 1 the Tribunal awards compensation in the sum €13,800.00 under the Unfair Dismissals Acts 1977 to 2007. The Tribunal also awards the sum of €1100.00 this sum being the equivalent of two weeks pay under the Minimum Notice and Terms of Employment Acts 1973 to 2005. Furthermore the Tribunal awards the sum of €1100.00 under the Organisation of Working Time Act 1997.

In respect of claimant No 2 the Tribunal awards compensation in the sum of €4727.00 under the Unfair Dismissals Acts 1977 to 2007. The Tribunal also awards the sum of €550.00 this sum being the equivalent of two weeks pay under the Minimum Notice and Terms of Employment Acts 1973 to 2005. Furthermore the Tribunal awards the sum of €336.00 under the Organisation of Working Time Act 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)