

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE

*-claimant*

CASE NO.  
UD2343/2010  
RP3145/2010  
MN2284/2010  
WT1040/2010

Against

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: Mr E. Murray

Members: Mr. P. Casey  
Ms. P. Doyle

heard this claim at Cork on 18th April 2012  
and 17th July 2012  
and 18th July 2012  
and 2nd October 2012  
and 3rd October 2012

### **Representation:**

Claimant: In Person

Respondent:

The claim under the Redundancy Payments Acts 1967 to 2007 was withdrawn at the outset. The respondent conceded the claim under the Organisation of Working Time Act, 1997. This claim came before the Tribunal in conjunction with an employee appeal of the Rights Commissioner Decision **ref: pw-100886/10/MR, wt-100888/10/MR and te-100889/10/MR.**

This case has already been the subject matter of an interim ruling in relation to jurisdiction. The Tribunal held that it had jurisdiction to proceed with the claim under the Unfair Dismissals Acts, 1977 to 2007 and the appeal against the recommendation of the Rights Commissioner.

Evidence was given through an interpreter by the claimant here and after called "the employee". He said that he worked with the respondent for four years. He was a truck driver and

everything was good in the early days of his employment. He worked many hours and had very little time for his family. For the first two years he was working on his own and thereafter his family joined him from Poland. Around the time that his family arrived the problems began. Firstly, his wages were cut by €12.00 per day. In general there was less work for him because new drivers were being brought in. A number of pay cheques bounced and on more than one occasion the trucks that he was driving were not taxed and he himself had to pay the fines. He found himself in a difficult situation. He said that his wife then became pregnant and his employer made his life more difficult. He would create a problem when he had to take his wife to hospital for example.

On the 2<sup>nd</sup> of October 2010 the employee returned from holidays and he requested that the employer pay him for the period of his holidays. He said that the employer agreed to pay him if he would come in on the following Saturday and wash his truck. He said that he didn't ordinarily work on Saturdays and declined. On the 9<sup>th</sup> of October he was off work and he worked from the 10<sup>th</sup> to the 15<sup>th</sup> of October. On the 15<sup>th</sup> of October he was asked why he did not come in on Saturday to clean his truck. He said that his employer then said to him because he didn't clean his truck on Saturday he was fired. He was then told by the driver who was doing the rosters that he was being de-rostered.

He did not get paid for 13 days holidays and he tried to call his employer on one occasion. He received no letter of dismissal. He never received a P45. He eventually got one from the Revenue after 3 or 4 months. He never worked again. He didn't get the dole for a period of one month and he ultimately returned to Poland on the 11<sup>th</sup> of April 2011 and has no employment now.

In cross-examination the employee accepted that it was part of his job to keep his vehicle clean. He denied in 2009 that he indicated to his employer that he wished to go on a three day week and claim for the other two days and that his employer declined to do this. The employer gave evidence that most of his business was with a food distributor and that hygiene was crucially important to the customer. It was the driver's responsibility to maintain the cleanliness of the truck. In October 2010 he said that the employee's truck was filthy. He phoned the employee and told him that it was dirty and to come in and clean it. The employee told him "F....off" and never turned up for work again. The employer called to his house on one occasion and wrote a note and put it through the letterbox enquiring as to when he was coming back to work. He said that the employee's job was there for him if he had chosen to come back to work but that he did not. He said that he did not accept that the employee had been subsequently unemployed and said that he had seen him driving a truck for another haulage company subsequent to his departure.

## **Determination**

The only matter for the Tribunal to determine is whether or not the employee was constructively dismissed. Having heard the evidence and observed the parties the Tribunal is unanimously of the view that the conflicts in evidence should be resolved in favour of the employer and the Tribunal is satisfied that the employee has not discharged the onus of proof required to establish his entitlement to terminate his contract of employment.

Consequently, the claim under the Unfair Dismissals Acts, 1977 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 are dismissed.

The employer conceded the claim under the Organisation of Working Time Act, 1997 consequently the Tribunal award the claimant €960.00.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)