

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD954/2011
RP1311/2011

MN1090/2011

Against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Browne
Mr F. Dorgan

heard this claim at Waterford on 8th January 2013

Representation:

Claimant: In person

Respondent: Brian J. Chesser & Co., Solicitors, 19 Catherine Street, Waterford

The determination of the Tribunal was as follows:-

The claims under the Unfair Dismissals Acts, 1977 To 2007 and the Redundancy Payments Acts, 1967 to 2007 were withdrawn at the outset.

The Tribunal heard evidence that the claimant was given 4 weeks' notice on 30th Sept 2010. On 24th October she e-mailed her employer advising that she was entitled to a 6 weeks' notice period. There was conflicting evidence as to whether her employer told her to work out the additional two weeks or if he said "I don't suppose you want to work the next two weeks".

Determination:

Having considered the evidence adduced at the hearing the Tribunal accepts the respondent's explanation that the claimant was given four weeks' notice instead of six weeks in error. The Tribunal also accepts that the respondent believed that the claimant had waived her right to the final two weeks' notice.

However, the Tribunal finds that as the right to receive notice pursuant to s.4 of the Minimum Notice and Terms of Information Act 1973 to 2005 is a right vested in the employee, in order for the Tribunal to accept that this right had been waived by the claimant, pursuant to s.7 of the Act, there must be clear evidence that the claimant had so waived that right or part thereof.

In circumstances where there was conflict between the evidence of the claimant and the respondent the Tribunal finds no such clear evidence. Accordingly, the claim under the Minimum Notice and Terms of Information 1973 to 2005 succeeds and the Tribunal awards the claimant an amount of €707.10, being the equivalent of two week's pay.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)