

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD1477/2011
MN1554/2011
WT583/2011

against

EMPLOYER

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. C. Corcoran BL

Members: Mr. R. Murphy
Mr. F. Keoghan

heard this case in Dublin on 7 February 2013

Representation:

Claimant(s):

Mr. Donncha Woulfe BL instructed by
Daniel Spring & Co, Solicitors,
50 Fitzwilliam Square,
Dublin 2

Respondent(s):

Mr. Andrew Whelan BL instructed by
Donal Taaffe & Co, Solicitors,
Malthouse Square,
Smithfield Village,
Dublin 7

The determination of the Tribunal was as follows:-

Claims were lodged with the Tribunal under unfair dismissal, minimum notice and working time legislation in respect of an employment which began in March 2009 and ended in April

2011. It was alleged that the claimant had been dismissed in breach of fair and proper procedures and contrary to natural justice. For example, he was not given an oral or written warning or final warning or final written warning. He was not asked or advised that he should bring someone with him to the meetings where his performance and progress or lack of progress was discussed. He was not trained or sent on any relevant training course. At the start of the Tribunal hearing it was stated that the claimant was proceeding in respect of unfair dismissal and minimum notice only.

The respondent's defence was that the claimant had not been able to do the software sales and marketing job for which he had been hired and that he had known that he was not meeting the required standard. He had not been able to meet the targets that had been set for him as an employee although his targets had not been oppressive when compared to employee targets achieved in the time before he had been taken on. There were regular meetings between the managing director and the claimant. Targets did increase after one year but in the next month they went back down to the level at which they had started. There were only two employees. It was an informal company. The claimant was assisted at all times. There were chats with the claimant prior to the final meeting. The respondent could not recall clearly the details of the dismissal as alleged or whether warnings were given or not. All matters were carried out in an informal manner. At that meeting the claimant was offered another role but he subsequently did not accept it.

Determination:

As it was not established that there had been a breach of the Minimum Notice and Terms of Employment Acts, 1973 to 2005, the claim under the said legislation is dismissed.

As the claim lodged under the Organisation of Working Time Act, 1997, was not proceeded with at the Tribunal hearing the said claim is deemed to have been withdrawn.

Regarding the claim under the Unfair Dismissals Acts, 1977 to 2007, the Tribunal, having heard sworn testimony from the respondent's managing director and from the claimant, was not satisfied, in all the circumstances of the case, that the respondent had shown substantial grounds to justify the claimant's dismissal. The respondent's disciplinary procedures had been particularly lacking. For example he had not been invited to bring anyone with him to meet the managing director even when the managing director was ready to end his employment. It was not established to the satisfaction of the Tribunal that the claimant had known that he was in danger of dismissal and it appeared that, even at the end, he thought that his employment had ended by reason of redundancy before it was subsequently conveyed to him that he had, in fact, been dismissed.

The Tribunal, having heard details of the claimant's efforts to mitigate his loss by engaging in new work, deems it just and equitable to award the claimant compensation in the amount of €2,500.00 (two thousand five hundred euro) in allowing the claim against the respondent under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)