

EMPLOYMENT APPEALS TRIBUNAL

| APPEALS OF: | CASE NOS. |
|---------------------------------|--------------------------|
| EMPLOYEE 1 – <i>appellant 1</i> | UD971/2011 TE131/2011 |
| EMPLOYEE 2 – <i>appellant 2</i> | UD972/2011 TE132/2011 |
| EMPLOYEE 3 – <i>appellant 3</i> | UD973/2011 TE133/2011 |

In the case of

EMPLOYER – *respondent*
EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 TERMS OF EMPLOYMENT (INFORMATION) ACTS 1994 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Taaffe
Members: Mr J. Reid
Ms M. Maher

heard this claim at Dublin on 10th January 2013

Representation:

Appellant 1: Mr Michael Mulcahy SC instructed by Collins Crowley Solicitors,
2A Christchurch Hall, High Street, Dublin 8

Appellant 2: No appearance or representation

Appellant 3: No appearance or representation

Respondent: Ms Sarah Coughlan of Osbornes Solicitors,
Town Centre House, Naas, Co. Kildare

The determination of the Tribunal is as follows:

These cases came before the Tribunal as appeals by 3 employees against the recommendations of the Rights Commissioner reference numbers r-082089-ud-09/JC, r-082093-te-09/JC, r-095116-ud-10/JC, r-095118-te-10/JC, r-082082-ud-09/JC and r-082087-te-09/JC.

The Tribunal was satisfied that Appellants 2 and 3 were on notice of the hearing. However

neither attended the hearing. Their appeals fail for want of prosecution and the recommendations of the Rights Commissioner under the Unfair Dismissals Acts 1977 to 2007 and under the Terms of Employment (Information) Acts 1994 and 2001 are upheld.

Appellant 1's Case

The appellant 1 gave evidence. He was a motor mechanic. He worked for the respondent from 2003 to 2009. The respondents' business was a circus. Appellant 1 worked at everything. When they arrived in a town appellant 1 worked at putting up the tent, and then he gave out leaflets, worked as a mechanic and then had some food and went to sleep. Often he worked an 11 hour day. According to his contract of employment he was required to work a five day week but in fact he worked a seven day week. He was not given a copy of his contract of employment. He was shown a contract in 2008. He was given or paid for holidays.

Over the course of his employment, appellant 1 was accommodated in 3 different caravans. His living conditions were very bad, in particular, shower and toilet facilities were often lacking. At first he shared a caravan with five other people. Then he spent 2 years in a caravan with 4 others. Finally he was in a 4 room caravan with 2 people in each room. His living conditions improved when a separate caravan was provided that supplied facilities for cooking and taking a shower.

Appellant 1 grew increasingly frustrated by the situation. Matters came to a head when the caravan used for cooking crashed and was damaged beyond repair in March 2009. The respondent promised that it would be replaced but nothing happened. Appellant 1 had no choice but to leave on 6th April 2009.

Respondent's Case.

The respondent's representative told the Tribunal that the business had recently ceased trading and the respondent was not in attendance and therefore would not give evidence.

Determination

The Tribunal carefully considered all of the evidence adduced. It is the appellant 1's case that the failure of the respondents to promptly re-instate cooking facilities which had ceased to be available for a short period and which had been recently installed by the respondents was a culmination of failures over a long period by the respondents to properly provide reasonable working conditions for appellant 1.

The Tribunal determines that;

- (a) These conditions were unsatisfactory
- (b) The provision of cooking facilities improved these conditions
- (c) The action of appellant 1 in leaving his employment in the circumstances that arose was unreasonable and a disproportionate response to the situation that presented to him.

The appeal against the recommendation of the Rights Commissioner under the Unfair Dismissals Acts 1977 to 2007 fails. The recommendation of the Rights Commissioner is upheld.

The Tribunal accepted the uncontroverted evidence of appellant 1 that he was not given a contract of employment until 2008, outside the time specified in the legislation. The recommendation of the Rights Commissioner is varied and appellant 1 is awarded the sum of €1773.00 being 4 weeks' pay

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)