

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE – *appellant*

UD1286/2011

Against the recommendation of the Rights Commissioner in the case of

EMPLOYER– *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms V. Gates BL

Members: Mr R. Prole
Mr J. Dorney

heard this claim at Dublin on 19th November 2012

Representation:

Claimant:

Respondent:

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an employee appeal of the recommendation of the Rights Commissioner reference number r-096742-ud-10/JW in relation to quantum only.

Appellant's Case

The appellant contended that there was a fundamental breach of his contract of employment in that his wages were not paid on a regular or reliable basis. The appellant said that as a foreman for the respondent company, he had to pay for diesel and out of pocket expenses for his crew and, when he was not refunded or his wages not paid promptly, he was left in a position that he had to borrow monies from friends and his Direct Debits failed at his bank. The late payment of wages pertained from in and around August, 2009 until August, 2010. Given that the appellant could not rely on payment of his wages when due, he felt that he had no option but to resign and seek alternative employment, and in the circumstances he claimed that he was constructively dismissed.

Respondent's Case

It was contended on behalf of the respondent that at the time of leaving employment, no wages were owed to the appellant. The respondent's representative told the Tribunal that the respondent company had been sold. The previous owner no longer resides in the jurisdiction and the present owner has had no role in the termination of the appellant's employment. The respondent's representative said that the respondent company held a number of meetings to make all employees aware that the company was experiencing significant cash flow problems, as the company was itself facing difficulties in receiving payment for works undertaken. As the respondent was not in a position to call contravening evidence, its representative conceded that the appellant was constructively dismissed.

Determination

The Tribunal finds that the appellant was constructively dismissed from employment by reason of the failure of the respondent to pay wages when due. The respondent accepted that the appellant was constructively dismissed. The appellant gave evidence that despite his best endeavours; he has only been able to secure three or four days' work since resigning from employment. Whilst the respondent made genuine attempts to meet its financial obligations to pay employees wages when due in the face of significant cash flow problems, the Tribunal is of the view that the respondent breached the appellant's contract of employment in relation to the payment of wages. Taking all the evidence and submissions made on behalf of each party into consideration, the Tribunal determines that the recommendation of the Rights Commissioner should be varied in relation to the sum awarded to the appellant and awards the appellant the sum of €17,500.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)