

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD1190/2011

WT487/2011

MN1282/2011

against

EMPLOYER

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
UNFAIR DISMISSALS ACTS, 1977 TO 2007
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney
Members: Mr. J. Hennessy
Mr. F. Dorgan

heard this claim at Thurles on 30th January 2013

Representation:

Claimant:

Employment Matters, 4 Canada Street, Waterford

Respondent:

No appearance by or on behalf of the respondent.

There was no appearance by or on behalf of the respondent and the Tribunal is satisfied that the respondent was properly notified of the hearing.

Claimant's case

The claimant commenced employment as a lorry driver with the respondent on 11th June 2000. Initially he was paid €600.00 a week and €50.00 extra if he worked on Saturday. However this was changed to €500.00 per week and €50.00 for Saturday sometime in 2009. There was no consultation about this pay cut and the claimant was told to "take it or leave it".

From 2009 to the date the claimant left his employment there were difficulties with regard to trucks, the claimant was assigned to, not having tax or insurance discs and some not having a current D.O.E. certificate. The claimant was also told to drive overloaded trucks. When the

claimant tried to raise a grievance with the respondent he was told by his manager that “there is no lock on the gate and you can leave whenever you like”.

The claimant was attending his doctor because of the stress he was suffering as a result of the treatment he was receiving at work and the Doctor advised him that he should not be there. The Doctor prescribed medication for the claimant and at the date of the hearing the claimant was still on tablets for depression.

Determination

Having carefully considered the claimant’s uncontested evidence the Tribunal is satisfied that the respondent made working life so difficult for the claimant that he had no alternative to resign his position. It was part of the claimant’s evidence that he tried to raise a grievance with the respondent but was told “there is no lock on the gate and you can leave whenever you like”.

The claimant’s mental health suffered as a result of the treatment he received at the hands of the respondent and it he was advised by his Doctor not to continue in employment with the respondent.

The Tribunal finds that the claimant was constructively dismissed by the respondent and in all the circumstances awards the claimant €22,500.00 (twenty two thousand, five hundred euro) under the Unfair Dismissals Acts, 1977 to 2007.

The claimant gave evidence that he was paid twenty days holidays each year. This meets the requirements of the Organisation of Working Time Act, 1997. The provision for calculating holidays on the basis of 8% of total yearly hours worked is subject to a maximum of twenty days per year. Accordingly the claim under this Act fails.

With regard to the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 the Tribunal finds that as he left without giving notice to the respondent he is not entitled to receive notice or payment in lieu thereof from the respondent and the claimant’s claim under these Acts fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)