

EMPLOYMENT APPEALS TRIBUNAL

CLAIM and APPEALS OF:

CASE NO.

EMPLOYEE, –**Claimant**

UD868/2012

PW103/2012

TE140/2012

TE152/2012

against

EMPLOYER - **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
PAYMENT OF WAGES ACT, 1991
TERMS OF EMPLOYMENT (INFORMATION ACTS), 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr R. Maguire BL

Members: Mr D. Moore
Mr F. Barry

heard these cases at Dublin on 17 June 2013

Representation:

Claimant:

Respondent:

The determination of the Tribunal was as follows:

These cases came before the Tribunal with the claimant taking a first instance claim of unfair dismissal, the claimant appealing against the decision of a Rights Commissioner **R-113134-PW-11/JT** under the Payment of Wages Act and both sides appealing against the recommendation of a Rights Commissioner **R-119237-TE-12/RG** under the Terms of Employment (Information) Acts.

Determination:

At the outset the Tribunal was not satisfied that the terms of Section 7 (2) (b) of the Payment of Wages Act had been complied with in that the claimant's side had not put the respondent on notice in writing with a copy of the appeal. Accordingly the Tribunal found that there was no jurisdiction to hear the appeal under the Payment of Wages Act, 1991.

In regard to the appeals by both parties of the recommendation of the Rights Commissioner under the Terms of Employment (Information) Acts, the Tribunal finds that the contract does not satisfy Section 3 (1) (g) of those Acts in regard to the National Minimum Wage Act, 2000. However, the Tribunal notes that the contract provides for a rate of pay of €12-60 per hour at the start of the employment in 2008. This is significantly in excess of the minimum wage and the claimant accepted that he had not been disadvantaged in any way by this omission in his contract. In the circumstances the Tribunal varies the recommendation of the Rights Commissioner to find that the complaint was well-founded but does not order the employer to pay compensation of any amount under the Terms of Employment (Information) Acts, 1994 and 2001.

The claimant was employed from September 2007 as a van driver for the division of the respondent which provided a service to the HSE as the distributor of fittings and furnishings to patients who had been discharged into the community. The only oral evidence tendered by the respondent at the hearing was given by the Human Resource director of the respondent who conducted two appeals by the claimant, the first against a final written warning and the second against the decision to dismiss. Both appeals were rejected. The divisional manager of the respondent, who made the decision to issue the final written warning and then to dismiss the claimant was not called to give evidence. Evidence was given by the claimant disputing the factual basis of the claims by the Respondent and this evidence was probative of the fact that the claimant did not receive a fair hearing with proper notice and was not given an opportunity to adequately deal with the statements of co-workers that militated against him. It was also not made clear by the respondent the precise reasons as to why the claimant was dismissed. In those circumstances the Tribunal is not satisfied that the respondent has demonstrated that the decision to dismiss was not unfair and, accordingly, it must follow that the dismissal was unfair. Having heard evidence from the claimant the Tribunal is not satisfied that he made adequate efforts to mitigate his loss for the period since his employment with the respondent ended. Having considered all these factors and the claimant's contribution to his dismissal the Tribunal measures the award under the Unfair Dismissals Acts, 1977 to 2007 at €4,750-00.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)