

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE-*Claimant*

CASE NO.

UD1470/2010

MN1410/2010

WT607/2010

RP1979/2010

Against

- EMPLOYER-*Respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr J. Horan
Mr T. Brady

heard this claim at Dublin on 15th December 2011

Representation:

Claimant: Mr. Conor Bowman, BL, Mr Rory McGarry, McGarry & Company, Solicitors, 33 Main Street, Bray, Co Wicklow

Respondent: In Person

The determination of the Tribunal was as follows:-

The Tribunal has carefully considered the evidence adduced. The claimant is claiming that he was unfairly dismissed following a meeting between employer and employee on Monday the 8th March 2010. This meeting took place following a difference of opinion between the employer respondent and the employee concerning the employee's right to take the previous Friday off work.

It is common case that the employee, who had been with the respondent company for over 4 years, had been an excellent employee and indeed was regarded as one of their best installers. It is agreed that the claimant was on a basic salary of €35,000 but that the opportunity to earn bonuses was what made the job more attractive to the claimant.

There can be no doubt that a serious downturn in 2009 had a knock-on effect on the claimant's earning capacity and understandably the claimant became increasingly dissatisfied with the fact that he continued to work as hard as ever but with less take home pay. The fact that the claimant was a valued employee is evidenced by the fact that the respondent company persuaded the claimant not to hand in his notice on at least two occasions over the years.

The Tribunal is satisfied that the claimant's work continued to be excellent but that his attitude had changed. Clearly this stemmed from a frustration at the reduction in take home pay. The Tribunal notes that by late 2009, early 2010, whilst there might have been talk about unemployment benefit, redundancy and the breaking of a glass window (whether in jest or otherwise), this only ever remained talk and the claimant never made an issue of wanting to leave at this time.

The claimant states that at least two weeks in advance he requested a day off some time in the week commencing the 2nd of March 2010. The claimant states he got permission for same from PM, the Production Director. PM states that this never happened. The Tribunal heard evidence to the effect that any requested days off would be readily given but would be noted on the wall chart/calendar which is in full view of everyone. It was noted that the requested day off was never filled in.

The Tribunal is satisfied that the claimant knew or ought to have known that the company did not know that he was looking for a day off in the week commencing the 2nd of March. This may have been because PM simply forgot the request but either way the claimant could have easily seen from the said wall chart that the day off had not been noted and could have rectified that mistake at any point in the two week lead up to the 2nd March.

In addition, the Tribunal does not find it credible that the claimant went through the Monday, Tuesday, Wednesday and Thursday of that week not knowing which day he would be getting off.

From the company's point of view they got notified by the claimant on the Thursday that he required the Friday off and that there was nothing that they could do about it.

The Tribunal accepts that a difficulty had arisen at this stage as between the employer and employee at this point in time. The Tribunal further accepts that the respondent company was entitled to discipline the claimant who had left them in the lurch on the Friday 6th of March and had refused to ameliorate the situation in any way.

Having regard to the outcome of the said disciplinary meeting the Tribunal finds the terminating of employment to be utterly disproportionate and the respondent cannot prove that the claimant wanted to leave the company where it had failed to observe and follow any proper procedures including have an independent witness present, note taking or allowing any sort of "cooling off" period. In fact the Tribunal finds that no procedures whatsoever appear to have applied at the meeting and cannot for example reconcile the fact that a termination letter had been drafted prior to the meeting as being fair in any circumstances.

In conclusion, the Tribunal finds that the claimant was unfairly dismissed but would also find that the claimant's own actions and attitude contributed to the final decision being made. The Tribunal must also note that up to 3 weeks before the hearing the respondent company was willing to offer the claimant his job back. Reinstatement had been requested on the T1A.

Therefore the Tribunal awards the sum of €30,000.00 under the Unfair Dismissals Acts 1977 to 2007. The claimant received his entitlement under the Minimum Notice and Terms of Employment

Acts, 1973 to 2005.

As remedies under the Unfair Dismissals Acts, 1977 to 2007 and the Redundancy Payments Acts, 1967 to 2007 are mutually exclusive the claim under the Redundancy Payments Acts, 1967 to 2007 must fail. There was no evidence adduced in relation to the claim under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)