

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE - claimant

CASE NO.

MN2166/2010

WT986/2010

UD2202/10

Against

EMPLOYER - respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Hennessy
Ms S. Kelly

heard this claim at Waterford on 9th July 2012 and 15th November 2012.

Representation:

Claimant: Ms Elaine Morgan BL instructed by Mr. David Burke, David Burke & Co,
Solicitors, 24 Mary Street, Dungarvan, Co Waterford

Respondent: Mr. Derek Dunne BL instructed by Mr. Gerard McCullagh, McCullagh Higgins
& Co., Solicitors, 1-2 Cois Mara, Dungarvan, Co. Waterford
On 9th July 2012

No appearance by or on behalf of the respondent on 15th November 2012.

**At the outset of the hearing the claim under the Organisation of Working Time Act, 1997
was withdrawn.**

Respondent's Case:

The respondent is a property management company and employed the claimant as a security officer from 6th August 2004 to 6th June 2010. The claimant worked in Shopping Centre D. GOC was manager of the Shopping Centre during the claimant's tenure and carried out an investigation into alleged misappropriation of funds by the claimant. GOC was satisfied that the

findings of his investigation merited referral onwards for possible disciplinary action and accordingly referred the case to a Director of the respondent.

Claimant's Case:

The claimant commenced employment on 6th August 2004 and worked as a security officer in Shopping Centre D until his employment was terminated by the respondent on 6th June 2010.

The claimant categorically denied taking money from pay stations located in the centre during his tenure.

Determination:

Having considered the evidence adduced by the respondent on the first day of the hearing and the respondent failing to appear at the resumed hearing, as the company had gone into liquidation, the Tribunal is not satisfied that the claimant misappropriated money from the respondent. The Tribunal finds that the respondent did not discharge the burden of proving to the Tribunal that the reason the claimant was dismissed was fair.

The Tribunal further finds having considered the uncontested evidence of the claimant that he was unfairly dismissed. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the Tribunal awards the claimant an amount of €46,800.00. The Tribunal also awards the claimant €1,800.00 being the equivalent of four weeks pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)