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IN THE INDUSTRIAL TRIBUNAL OF GIBRALTAR

CASE No. 15/2004

Between

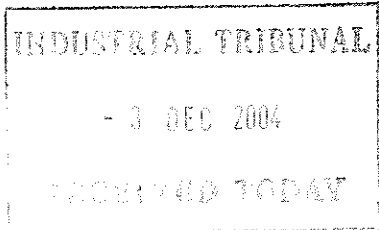
MAURICE VILLARUBIA

Complainant

and

GIBRAL FLORA LIMITED

Respondent



JUDGMENT

J Nuza for the Complainant.
No appearance by the Respondent.

The Complainant commenced employment as a gardener with the Respondent on 27th May 2003. His employment was terminated on 13th August 2004 after an exchange of letters between the Respondent and Mr Sisarello of the Transport & General Workers Union. He was paid his wages to 13th August 2004.

By Originating Application to this Tribunal dated 18th August 2004, the Complainant alleged that he had been unfairly dismissed. The Respondent delivered to the Secretary of this Tribunal a Notice of Appearance dated 31st August 2004 in which it stated that it did not intend to resist the claim of the Complainant. In the same Notice it admitted that the Complainant had been dismissed and alleged that the reason for dismissal was "redundancy". The Respondent delivered to the Secretary of this Tribunal a letter dated 31st August 2004 in which it confirmed that it had decided not to resist the claim of the Complainant and gave some background to the termination of employment which it thought the Tribunal should be aware of. Pursuant to Rule 12(2) of the Industrial Tribunal Rules this Tribunal has the power to take into account these representations and it does so.

The circumstances explained by the Respondent make it clear that it suspended the Complainant from work for the week of 9th to 13th August 2004 as a disciplinary measure because he had failed to agree to work overtime. As the Union made clear to the Respondent at the time, this measure was not lawful. In the event, the Respondent withdrew the suspension but instead terminated the Complainant's employment at the end of what it had originally designated as the week of suspension from work, that is, on the 13th August 2004.

If, before taking the measures it did, the Respondent had sought advice from its lawyers or from the Employment & Training Board, it would no doubt have appreciated that the action it intended to take could not be defended. The Complainant could not be legally compelled to work overtime beyond the hours of work fixed in his employment contract and any sanction imposed by the Respondent for not working overtime was unlawful.

I find on the facts before me that the plea of the Respondent not to resist the claim is unequivocal and that the dismissal was unfair.

Mr Nuza applies for a basic award of not less than £2,200 and for a compensatory award. He argues that the Tribunal should award a sum greater than £2,200 since the dismissal occurred as a retaliation of the Respondent to the Complainant's Trade Union membership and the involvement of the Union in defence of the Complainant's rights. I do not agree with Mr Nuza on this point. In my view, the dismissal occurred because the Respondent wrongly believed that the Complainant was not co-operating in the efforts of the Respondent to make its business survive during a difficult time. Taking into account the length of the Complainant's employment with the Respondent and the other circumstances of the termination, I award the minimum amount set in Rule 2 of the Industrial Tribunal (Calculation of Compensation) Regulations 1992, namely £2,200.

As regards the compensatory award, the Complainant's loss of earning is limited to 2 weeks' unemployment since he found new employment starting on 2nd September 2004. The wages of the Complainant net of PAYE but not of Social Insurance contributions were of £169.26 per week. I assess the Complainant's loss to be £339.52, less the sum of £103.50 he would have been entitled to by way of unemployment benefit.

Having regard to all the circumstances, this Tribunal finds that it is just and equitable to award the Complainant the total sum of £2,436.02 to be paid to the Complainant by the Respondent.



P X Nuñez
Chairman

2nd December 2004.