

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD1341/2005,RP607/2005
MN1000/2005

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O' Mahony B.L.

Members: Ms M. Sweeney
Mr K. O'Connor

heard this claim at Killarney on 13th March 2007

Representation:

Claimant : Pdraig J. O'Connell, Solicitors, Glebe Lane, Killarney, Co. Kerry

Respondent : No representation listed.

The determination of the Tribunal was as follows:

Respondent's Case

The respondent's general manager (GM) told the tribunal that the respondent owns and runs a wholesale cash and carry business. Its customers included public houses, restaurants, and retail stores. It has different categories of workers such as drivers, sales representatives, and warehouse personnel. It has around thirty permanent employees. GM explained the procedure for seeking leave: employees approach the witness in his office and request the particular days off or if they see him on the floor they would give him a slip of paper detailing their leave requests. Upon receiving a request he checks his diary and year planner to decide whether the leave could be granted. Generally he accedes to holiday requests when there is only one application from the same section for a particular time. If a slot is not free he would ask the employee for other dates or to see if s/he

could swap with another employee. All staff including the claimant are aware of the procedure and adhere to it.

On Monday 5 September 2005 when GM was busy opening the premises the claimant told him that he would not be in for work the following Friday and Saturday. He asked the claimant to “come back to him” on that matter and assumed that he would. GM was off work on Friday 9 September and when he returned to work the next day he discovered the claimant was not present that day and had also been absent the previous day. The claimant reported for work the following Monday. As the claimant did not offer any explanation for his absences he called him to his office on Wednesday and asked for an explanation. The claimant said he took those days off as a holiday and indicated that he did so irrespective of the company’s policy. GM explained that an employee cannot do what he/she just wants. GM suspended the claimant until the following Saturday and invited him to attend a meeting that day.

GM together with the floor manager (FM) met the claimant in GM’s office on Saturday afternoon, 17 September 2005. The claimant apologised for taking the two days off and said it was for the purpose of attending a wedding. According to GM the claimant did not seem to care about the disruption his absence had caused the respondent. The claimant knew that two van drivers from his section had already arranged to have that time off. As a consequence of the claimant’s behaviour and attitude the witness dismissed the claimant during the course of that meeting.

In cross-examination GM accepted that in the claimant’s two and a half years with the respondent, the claimant had never, prior to this incident, caused any problems for the respondent. No warnings had ever issued to him, he had never objected to his work and had willingly undertaken overtime duties when he could. The claimant worked in the warehouse and his duties were to bring stock into the cash and carry and put it on the racks. He also assisted customers with trolleys and helped on van deliveries. Neither GM nor the claimant had raised the topic again following the original request although they had seen one another on the premises that week. The witness assumed that since the claimant did not apply again for leave that he had changed his plans.

Prior to meeting the claimant on the Saturday GM discussed the claimant’s current situation with the owner of the company. At the meeting the claimant accepted that what he had done was wrong and apologised. GM proceeded to dismiss him without notice. He justified the dismissal on the basis that the claimant took the days off when other relevant staff were also on holiday. GM did not consider any other disciplinary option apart from dismissal. The claimant had not been made aware of the seriousness of the situation facing him including the prospect that his employment could be terminated prior to the final meeting. He was not offered the opportunity of representation at either of the meetings. The claimant’s response to his dismissal was, “That’s fine” and he then left.

FM told the Tribunal he attended the meeting on Saturday 17 September 2005 as a witness and did not participate in it. GM had “filled him in” on the purpose of the meeting and he was aware that this meeting was of a disciplinary nature. He knew that the claimant had taken two days off but did not know in advance that GM was going to dismiss him at that meeting. At the meeting the claimant realised he “was utterly wrong” to have taken those days off. The witness who knew the claimant well said he was not an arrogant person but behaved in an arrogant manner at that meeting. FM confirmed the claimant’s good record prior to this. The claimant’s two days’ absence caused a certain amount of disruption with the movement of stock from the warehouse.

Claimant's Case

The claimant commenced employment with the respondent in May 2003. Apart from working in the warehouse he also undertook delivery duties as a helper to van drivers. During his time with the respondent he was never issued with a contract of employment or a company handbook. The witness was never told of disciplinary or grievances procedures. He enjoyed his work and had never been in any trouble with his employer up to this incident. He had no problem working through lunchtimes and frequently worked overtime.

The claimant approached GM around 09.00 on 5 September 2005 and told him he was taking the following Friday and Saturday off. Despite his use of language at the time his application was a request as distinct from a statement. GM asked him to apply again as he had to check his diary. There was no further communication about the time off. The claimant took the days off. The following Tuesday GM asked him why he took the days off and the claimant told him it was to attend a wedding. GM told him that that was not good enough and that he would have to speak to the owner about it. On Thursday he did deliveries around the town and on his return at 02.45 when he asked GM if he could have his lunch break, he told the claimant that he might have to help with more deliveries in north Kerry. The claimant agreed to do so and said he would "get something outside". On his return at 06.30 GM told him GM wanted to see him in his office. GM told him he had not yet spoken to the owner and suspended him on pay and told him to return to him at 16.00 on Saturday, 15 September 2005 and he would tell him what was happening. The claimant was told to bring a representative with him to the Saturday meeting. At that meeting he again explained his reasons for his absence and expressed regret for taking the days off. GM dismissed him.

In cross-examination the claimant accepted that on previous occasions, in line with the company's procedure, he had gone to the office to apply for leave. However he was not aware such applications could be submitted on a slip of paper. The witness had four weeks notice of his planned attendance at the wedding in question. He thought that the manager would get back to him.

While the claimant was aware that two store staff and two van drivers were off the previous week he felt that he had given adequate notice of his two days off. He had got on well at his job and never refused to do anything he was asked. He denied saying to GM that he did not care who was off those two days. Had he known the consequences of taking those days off he would not have done so. He told GM that he would not behave in such a way again and that he was sorry for what he had done. The claimant did not receive a letter of dismissal.

Determination

The claimant was at fault in taking the two days off without having the matter confirmed by GM. Having heard the parties' in this case and taking the claimant's good record into account the Tribunal finds that the sanction of dismissal was disproportionate in this case. The claimant was never made aware that a failure to adhere to all stages of the procedure for applying for leave could lead to summary dismissal. Nor was he made aware during the disciplinary process that it could conclude with his dismissal. The Tribunal finds that the dismissal was both substantively and procedurally unfair. However, the claimant contributed to his own dismissal.

The Tribunal, having taken this contribution into account awards the claimant €5000.00 as compensation under the Unfair Dismissals Acts, 1977 to 2001.

The appeal under the Redundancy Payments Acts, 1967 to 2003 is dismissed.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 succeeds and the claimant is awarded €596.70 as the compensation due for the respondent's failure to comply with the terms of these Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

