

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD1348/2006, MN890/2006

Against

Employer

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2001
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey

Members: Mr. B. Kealy
Mr P. Trehy

heard this claim at Dublin on 27th April 2007

Representation:

Claimant: In person

Respondent : Mr John Barry, Management Support Services (Ireland) Limited,
The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:

Respondent's Case

The respondent is an enterprise engaged in the manufacture, supply and installation of kitchen units to the construction industry. The claimant was responsible for liaising with the fitting crew to ensure that appliances were fitted correctly. The respondent's sales manager was the claimant's supervisor. He said that the claimant was initially fine at work but that changed when he received reports of complaints about his performance. Those complaints mainly referred to the installation team's failure to complete their work and to reach certain deadlines. The witness also expressed displeasure at the difficulty the respondent had at times in contacting the claimant. The sales manager informed the respondent's contracts' manager about his concerns in relation to the claimant. The witness identified foremen and customers whom he said were critical of the claimant's work.

The witness referred to a letter written by that contracts' manager to the claimant. He was told that the claimant was undertaking work in a private capacity for customers and being paid for that work while in the employment of the respondent. The claimant was absent from work for the week

beginning 22 May 2006. The witness had to attend to some of the claimant's duties that week. As a result of that extra work the sales manager felt under extra pressure and more stressful. He met the claimant in a public house on the evening of 27 May. During the course of a conversation with him the witness got annoyed and could not recall whether he indicated to the claimant that he was dismissed. The witness told the Tribunal that he did not have the authority to dismiss staff. The sales manager stated that he did not instruct the claimant to go to a certain site on 19 May to oversee a snag list operation.

The contracts' manager said he asked the claimant to meet him on 19 May 2006 to discuss work issues. The claimant neither appeared for that meeting nor a subsequent one on 22 May. The witness was not aware that the claimant had to attend to a site elsewhere on 19 May. On the morning of 22 May the contracts' manager received a text message from the claimant. The claimant was seeking time off from work. The witness was not prepared to allow that and attempted to phone the claimant in response to his text. He left a message for the claimant asking him to contact the witness. He did not reply by text message or received telephones from the claimant that morning. That procedure was repeated up to 21 May when the claimant's phone, which was the property of the respondent, was diverted back to the company. Following that procedure the witness was somewhat unhappy with nature and content of the calls received on that phone. He formed the opinion that the claimant was doing nixers using the respondent's equipment. Such operations were not allowed.

By the time the witness met the claimant on 29 May he was not aware that the claimant and the sales manager had exchanged words the previous Saturday. The claimant explained that his absence was due to personal reasons and he had no desire to expand on that. The witness also raised other issues connected with the claimant at that meeting. Those included his work performance, his general lack of contact, and the working for customers independent of the respondent without authority. The witness decided to dismiss the claimant on the grounds of gross misconduct based on those reasons.

Claimant's Case

The claimant commenced employment with respondent in May 2004. He had no memory of receiving a letter dated 27 June 2005 from his employer but acknowledged his signature for it on 12 July 2005. That letter described him as an installation supervisor and contained his roles and duties. He also acknowledged that he was asked to attend a meeting in the contracts' manager's office on 19 May 2006 but was subsequently instructed to go to another site on that day and therefore missed that meeting. He also phoned that manager four times on the morning of 22 May but never received an answer. He then sent a text asking for the week off and got a text reply stating he could have that time off. He then "knocked off" the phone. By the Thursday of that week the claimant heard he had been dismissed from the respondent. He was upset at that news and felt at that time he still had a good relationship with the sales manager. However he did not contact that manager to seek an explanation for his reported dismissal.

When the claimant and the sales manager met in the public house on Friday 26 May the witness stated that he was "more or less" dismissed by him. The witness said that the issues as stated by the contracts' manager were not really raised by him at their meeting on 29 May 2006.

Determination

The Tribunal finds that this dismissal was unfair. The claimant was not afforded the opportunity to answer the respondent's accusations against him thus denying him natural justice. There was a lack of proper procedures on the respondent's part in this process. The claimant also made a significant contribution to his own dismissal. He seemed unaware and neglectful of his full responsibilities to his employer. The Tribunal was not satisfied in relation to his mitigation of loss. These factors are reflected in his award of €5000.00 under the Unfair Dismissals Acts, 1977 to 2001.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 succeeds and the appellants are awarded €770.00 under those Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

