

EMPLOYMENT APPEALS TRIBUNAL

Claim Of:

Employee
MN566/2006

against

Employer

under

Case No.

UD851/2006

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: Mr. D. Mahon B.L.

Members: Mr. J. Hennessy
Mr. G. Whyte

heard this claim at Carlow on 9th May 2007

Representation:

Claimant: Mr. David Osborne, R.A. Osborne & Son, Solicitors, Emily Square,
Athy, Co. Kildare

Respondent: Mr. Francis Taaffe, Francis B. Taaffe & Co., Solicitors, Edmund Rice Square,
Athy, Co. Kildare

The determination of the Tribunal was as follows:

Respondent's Case:

The respondent set up his business in 1997 and the claimant commenced employment with the respondent during the same year. The claimant worked as a general operative and was a good skilled general worker. In 2000 the respondent had three employees and the work was based in Dublin. In 2005 the respondent sought work outside Dublin but found this difficult to secure.

The claimant was placed on lay-off three times during his employment. The first period of lay-off was when he was based at St. Patrick's Cathedral in Dublin. This work had been scheduled to commence on the 25 November 2001 but the start date was delayed as the architect failed to notify the relevant county councils. Due to this delay the respondent had to lay-off the claimant for a period of time. This period of lay-off ended at the beginning of February 2002. The second period of lay-off occurred after a dispute with a client. The claimant was laid off from late 2002 to early 2003.

The third period of lay-off was in May 2006 when the work was based at a site in county Carlow.

The claimant and an apprentice worked on this site. Their role was to prepare the building for the roof. As part of this contract the respondent had agreed that second checking would be completed. This involved hanging doors and skirting. The claimant did not have the necessary skills to hang doors. The contractors could not confirm a date when this work could commence. The respondent did not have any other work except a few small snagging jobs. The respondent had sought but was unable to secure other work.

On Monday, 22 May 2006 the claimant was working off-site at the respondent's dwelling house. On Tuesday, 23 May 2006 the respondent told the claimant unless work was secured he would have to "let him off" as work was quiet. The claimant's last day of work was Friday, 26 May 2006. The respondent wanted to secure work because he wanted to retain the claimant in his employment.

During the next number of weeks the respondent received a telephone call from a Citizen's Information centre enquiring about redundancy on behalf of the claimant. The respondent stated it was his full intention to offer work to the claimant as soon as he had work. The respondent had already told the claimant this. The claimant contacted the respondent and asked him for his P-45. The respondent told him a P-45 was not necessary. The claimant told the respondent he needed his P-45 to receive Social Welfare.

The respondent telephoned the claimant in early July 2006 to offer him work. The claimant told him to ... "go f**k yourself, I'm going to sue for unfair dismissal." On the 17 July 2006 the respondent received notification of the claimant's unfair dismissal claim from the claimant's solicitors.

The respondent did not employ non-nationals after the claimant was placed on lay-off nor did he offer employment to the claimant on a cash basis.

During cross-examination the respondent stated the claimant was a good worker but he was not a second fixer. When second fixing had to be done he, the respondent, carried it out. The apprentice did second fixings but only under the respondent's supervision. The second fixings were completed on the site in county Carlow a few weeks later. From the 23 May 2006 to the 12 July 2006 the respondent and the apprentice had suitable work for themselves.

Answering questions from the Tribunal the respondent stated during the period of lay-off from the end of November 2001 to the start of February 2002 the respondent paid the claimant his holiday pay.

Claimant's Case:

The claimant has eighteen years experience in the building industry and he has experience doing first and second fixings, hanging doors, dado rails and skirting. He is not a qualified carpenter.

The claimant denied there was a period of lay-off in November 2001 when he was working on St. Patrick's Cathedral in Dublin. He worked on this site for a number of months. In 2003 the lay-off referred to was for a period of three weeks while the respondent was on holidays. The claimant was paid his holiday pay for these three weeks.

On the 23 May 2006 the claimant was working at the respondent's home when the respondent told him he was being laid off from the 24 May 2006. Until this date the claimant had been working at the county Carlow site. The roof was complete and the plasterers were working on the site. The

next stage was second fixing which the claimant had done before. The claimant stated if a second fixer had been needed why had the respondent not employed such a person. The following Friday the respondent paid the claimant for working Monday, Tuesday, and Wednesday and offered him cash in hand for Saturday. The claimant refused to work for a cash payment as he had registered for Social Welfare on Thursday. The claimant heard through a third party that the respondent hired non-nationals after the claimant was laid-off.

In July 2006 the claimant received a telephone call from the respondent offering him work but for cash in hand. The claimant denied telling the respondent to “go f**k himself”. The claimant recalled going to a Citizen’s Information centre for advice but he did not ask them to make a telephone call to the respondent on his behalf nor was he present when such a telephone took place.

The claimant established his loss for the Tribunal.

During cross-examination the claimant confirmed he had never been paid by cash throughout the course of his employment and that he was in the CIF Pension Scheme.

Answering questions from the Tribunal the claimant stated that the respondent told him on the 12 July 2006 that he had lots of work. The basis of his claim for Social Welfare was that he had been laid off.

Determination:

The members of the Tribunal considered very carefully all of the evidence adduced and the statements put forward. It is the unanimous determination of the Tribunal that a dismissal did not occur. Therefore, the claims under the Unfair Dismissals Acts, 1977 to 2001 and the Minimum Notice and Terms of Employment Acts, 1973 to 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)