

## EMPLOYMENT APPEALS TRIBUNAL

Claims Of:  
Employee

RP373/2006

Case No.  
UD734/2006

MN487/2006  
WT240/2006

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  
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. R. O'Flynn B.L.

Members: Mr. M. Forde  
Mr. J. McDonnell

heard this claim at Cork on 13th September 2007

### **Representation:**

Claimant: In person

Respondent: Ms. Sheila O'Keefe, M.J. O'Callaghan & Son, Solicitors,  
Mitchelstown, Co. Cork

### **The determination of the Tribunal was as follows:**

The Tribunal heard dismissal was in dispute between the parties.

### Claimant's Case:

On the 21 February 2006 the respondent asked the claimant if he had collected pipes. The claimant

thought the respondent must have asked him to collect pipes the previous day but the claimant had not heard this instruction. The respondent started shouting and cursing at the claimant. The claimant asked the respondent to calm down but the respondent continued to shout and curse. The claimant told the respondent he was not accepting such treatment from an employer he had been working with for five years. The claimant went home and did not return to work the rest of the week.

The claimant received letter dated 24 February 2006. The letter stated, *"I am somewhat disappointed with the situation that arose last Tuesday morning when I felt the need to bring into question your detail to work, and attitude towards the job. You know I dislike having to do this as for the most part I have enjoyed a constructive and friendly relationship with you. Since leaving last Tuesday morning you have failed to make any contact with me. I don't wish to hassle you but you might please let me know what your intentions are."*

The claimant visited the respondent on the 25 February 2006 and they discussed the matter. The respondent told the claimant he intended to implement rules governing the time they started work at. The claimant agreed with the respondent about this. The claimant did not think that there was friction between them at this meeting.

On Sunday, 26 February 2006 the claimant received a telephone call from the respondent who told him they would leave things as they were. The claimant believed this meant the respondent was not taking him back into his employment. The claimant was upset as he was employed by the respondent for over five years. The claimant hung up the telephone.

On Friday, 3 March 2006 the respondent called to the claimant's house and handed the claimant a cheque for three days holiday pay and two days wages, along with his P-45. A copy of the payslip accompanying this payment was submitted to the Tribunal. The claimant asked the respondent about minimum notice. The respondent told him he was not entitled to it.

The claimant established his loss for the Tribunal.

During cross-examination the claimant stated he went home on the 21 February 2006 to allow the respondent time to become calm. The claimant accepted he had cursed also after the respondent swore at him. It was put to the claimant that he had not contacted his employer in the three days following the argument. The claimant accepted this but stated that he had made contact after the respondent's letter of the 24 February 2006. The claimant had not left his employment and stated if that was his intention he would not have spoken to the respondent by telephone or visited him at his house after he received the respondent's letter. The claimant did not ask for his P-45 at the meeting on the 25 February 2006.

It was put to the claimant that he told the respondent at this meeting that he had a new job for the following Monday. The claimant stated that he did not start a new job until the 6 March 2006. He stated this was proven by the fact he was at home on the 3 March 2006 when the respondent delivered his P-45 and a cheque. When he spoke to the respondent on the 25 February 2006 he told him that he might have a new job not that he did have a new job.

Answering questions from the Tribunal the claimant stated that during the telephone call the respondent told him that they would leave it as it was. The claimant interpreted this to mean that he was not to return to work with the respondent.

### Respondent's Case:

On the 20 February 2006 the respondent gave an instruction to the claimant to collect pipes. He asked the claimant about the pipes the following day. The claimant had not collected the pipes and an argument ensued. The respondent told the claimant he caused a delay in the work because he had not collected the pipes. The claimant was abusive towards the respondent and walked away from him. The respondent also walked away.

When the respondent returned the claimant was not at the site. The respondent believes the claimant overreacted. The respondent had no intention of dismissing the claimant. He thought the claimant would return to work within the next hour. However, the claimant did not attend for work for the rest of the week.

The respondent sent the claimant a letter dated 24 February 2006, as he wanted to know if the claimant was returning to work. The respondent's intention when writing this letter was to find out if the claimant wanted his job.

When the claimant visited the respondent on the 25 February 2006 the respondent discussed new procedures with the claimant. The claimant stated that he could not work like that. The respondent asked the claimant to think about it. In the telephone call on the 26 February 2006 the claimant stated that he had work elsewhere and hung up.

When the respondent delivered the P-45 the claimant enquired about minimum notice. The respondent told the claimant he could not pay minimum notice when a person had walked away from his job.

Answering questions from the Tribunal the respondent stated that he, his brother and another employee carried out the claimant's work after he left. The respondent hired a new employee two weeks later.

The respondent stated there might have been a misunderstanding during the telephone call on the 26 February 2006 when the claimant said he might have other work.

The respondent did not contact the claimant in the days following the 21 February 2006 because he thought the claimant would contact him. The respondent's letter dated the 24 February 2006 was delivered to the claimant's post-box on the same date.

### Determination:

The Tribunal unanimously decided that there was not a dismissal by the employer and that the claimant's employment ended by his own volition. The claim under the Unfair Dismissal Acts, 1977 to 2001 is dismissed.

The Tribunal find that the claim under the Redundancy Payment Acts, 1967 to 2003 fails.

The claimant did not give the employer notice nor was he available to work such notice. Therefore, the claim under the Minimum Notice & Terms of Employment Acts, 1973 to 2001, is dismissed.

The claimant's holiday pay was paid to him; therefore his claim under the Organisation of Working Time Act, 1997 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

