

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD556/2007, MN410/2007

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: Mrs. M. Quinlan

Members: Mr J. Goulding
Mr A. Butler

heard this claim at Wicklow on 13th February 2008

Representation:

Claimant : Mr. Stan Murphy, Murphys, Solicitors, Mount Clarence House,
91 Upper Georges Street, Dun Laoghaire, Co Dublin

Respondent : Mr Simon Sheridan, SIMI, 5 Upper Pembroke Street, Dublin 2

The determination of the Tribunal was as follows:

Respondent's Case

A co-director of this motor service enterprise outlined his involvement in this case. On 28 December 2006 the witness received a phone call from a salesman on the company premises informing him that a customer was complaining about the behaviour of the claimant. The claimant was employed as a garage labourer and assistant. That customer had recently conducted business with the respondent and the respondent considered customer service as paramount as the garage relied heavily on local trade. In this incident the claimant had called out to the customer's residence to undertake a job on the respondent's behalf.

Upon hearing of this complaint the witness in turn phoned the customer who informed him about the claimant's behaviour. That customer told the witness how the claimant threatened and generally abused him. During a follow-up discussion with the claimant related to that report the claimant accepted he had used offensive language to the customer. In telling the claimant that he could not speak to customers like that the witness proceeded to dismiss the claimant. He justified that

decision on the grounds of misconduct. According to the witness the claimant told him in a most colourful way what he could do with himself. During this encounter with the claimant the witness contacted his co-director and relayed the situation to him. They discussed what action to take.

The witness acknowledged that statements were not taken from either the claimant or that customer and he did not seek such statements. He had given the claimant a contract of employment.

Another co-director confirmed he discussed the claimant's situation with his colleague on the phone on 28 December 2006. This witness left the decision with that colleague on how to deal with the claimant. He was neither present to hear the claimant's comments about the incident nor did he speak to the customer concerned. This co-director did not give examples of what constituted gross misconduct but added that the "claimant knew himself he had crossed the line".

Claimant's Case

On 28 December 2006 the claimant called to a customer to attend to a certain job on his vehicle. However, when he arrived there he discovered that the right tools were not available for another separate job on the car. The customer became agitated with the claimant's unsuccessful attempt to remedy the problem with the vehicle and this became the focus of a dispute between them. That dispute took the form of verbal abuse and a minor physical altercation. The witness said he was shocked at that customer's behaviour.

The claimant met one of the co-directors when he returned to the company premises following his interaction with that customer. According to the witness that director indicated that he did not care what the claimant had done with that customer who had just transacted business with the respondent amounting to a sizeable sum. The witness claimed that he was never given an opportunity to explain his actions and the circumstances of his encounter with that customer that morning. When he tried to offer an explanation of events with that customer the director "didn't want to know". He did not tell that director that he threatened that customer and added that he never threatened the life of the customer. The claimant confirmed that statements were not taken regarding the incident with the customer. He also commented that he was never furnished with a contract of employment nor given payslips.

Determination

This was a case of summary dismissal in which the respondent had to demonstrate it acted in a fair and reasonable way considering the circumstances. The respondent failed to do this. Instant dismissal is a blunt instrument and must therefore be used very cautiously and sparingly. No proper procedures were applied in this case such as an investigation or a right of representation for the claimant who was facing dismissal. There was a conflict of evidence over much of the evidence including the existence of a contract of employment. No references were made to its disciplinary and grievance procedures.

The Tribunal finds that the claimant was unfairly dismissed under the Unfair Dismissals Acts, 1973 to 2001 and accordingly awards him €8,100.00 as compensation under those Acts.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 is allowed and the appellant is awarded €423.00 as compensation for a week's notice.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

