

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

MN729/2006

UD1105/2006

against
Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr M. Murphy
Mr O. Nulty

heard this claim at Drogheda on 12th September 2007

Representation:

Claimant(s) : Mr. Conor G. Breen, McDonough Matthews & Breen, Solicitors,
Distillery House, Distillery Lane, Dundalk, Co. Louth

Respondent(s) : Mr. Breffni O'Neill, Construction Industry Federation, Canal Road, Dublin 6

The determination of the Tribunal was as follows:-

Respondent's Case:

The site Manager of the Ardee site gave evidence. The claimant commenced employment with the respondent in May 2006 as a basic scaffolder. There was also an advanced scaffolder on-site. The witness explained the difference between a basic and an advanced scaffolder. A basic scaffolder can only work to a certain height and cannot sign off on the safety of the scaffolding.

Another company had employed the claimant previously. This company (hereafter known as BD) was owned by the brother of the owner of the respondent company. BD also employed the witness.

On August 17th 2006 the advanced scaffolder transferred to BD, as there was no more work for him with the respondent on the Ardee site. The claimant was let go the following day. When asked, the witness said that it had been his decision to dismiss the claimant. The witness told the Tribunal that the claimant had been very abusive towards him when he was informed that he was dismissed. The claimant told the witness that he would return for work the following day and that it would take "the Gardaí to remove" him.

In October 2006 a sub-contractor was hired for a couple of weeks to complete the work on-site.

When asked, the witness stated that the claimant had not been dismissed for union activity but because there was no more work for him as a basic scaffolder. When asked, he stated that there were other union members working on-site.

On cross-examination the witness explained the respondent and BD were sister companies. On the Ardee site there were 100 houses to be completed but that work had stopped after 21 were done in November 2006. When asked, he stated that some labourers had been laid off also. The rest of the labourers left were kept to keep the yard clean.

When asked, he stated that the claimant had handed him union forms to hand over into the office. There was no problem. When asked, he said that there had been no work for the claimant on the BD site.

When asked if he had contacted the Gardai on the day of the claimant's dismissal, he replied no. When asked he stated that he was not a member of a union. A shop steward was on site from BATU but there were no union officials from ATGWU on-site.

Claimant's Case:

He explained that he had been employed with the respondent from May 14th 2006 to August 18th 2006 as a basic scaffolder. Previously he had been employed on the BD site for 6 months and had been promoted to supervisor after 6 weeks.

He told the Tribunal that he had handed a union membership form to the respondent's witness on Monday August 14th 2006. The following Friday August 18th 2006 he was informed that there was no more work for him. He told the Tribunal that there had been more work on-site. Three days later a sub-contractor was hired to complete the work.

The claimant stated that there was no union on-site but he had discussed the issue with some of his work colleagues. He gave evidence of loss.

On cross-examination he stated that he had asked that, as a union member, would he be the first person to return to work but received no answer from the respondent's witness. When asked he could not remember the names of the work colleagues he had discussed union membership with. He explained that he had been a member of a different union in the past. The claimant was cross-examined on the mitigation of his loss. When asked by the Tribunal he said that he did not know of any other union official on-site.

Determination:

The Tribunal has carefully considered the evidence adduced by the parties at the hearing on September 12th 2007. The Tribunal requested some documentary evidence of union membership amongst the Respondent's workforce. The Respondent had stated in evidence that it had tolerated union membership amongst its workforce. In his evidence the Appellant stated that within days of indicating his union membership to his employer he was dismissed from his employment. It is noted that at the time of reaching its determination, some two months post hearing, absolutely no documentation or other communication had been produced by the Respondent which proves the Respondent's contention that union membership and activity is commonplace.

The Appellant commenced employment with a sister company BD from about December 2005 for about 6 months. He transferred to the Respondent's site in and around May 2006 wherein he continued to work as a basic scaffolder.

The onus is on the Respondent to show that the dismissal was fair in all the circumstances. The Appellant's case was on the narrow point that he was let go by reason of his request to have his union membership recognised.

The Tribunal afforded the Respondent every opportunity to demonstrate to the Tribunal that it had no difficulty with union membership and that the Appellant was legitimately let go by reason of the unavailability of work.

In the absence of any evidence to the contrary, the Tribunal finds that the Respondent does not have a union tolerant workplace and therefore the claimant succeeds.

In the thirteen months between being let go and the hearing, it is noted that the Appellant states he only worked for three weeks. The Tribunal finds that the Appellant failed to fully mitigate his loss and awards in the sum of € 20,000 under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal awards the Appellant € 815.00 being the sum due for one weeks notice at € 815.00 gross per week under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)