

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF: CASE NO.
Employee UD628/2006,
MN415/2006
WT202/2006

Against
Employer
Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001
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 M. Petty

Members: Mr G. Phelan
Mr. T. Kennelly

heard this claim at Limerick on 11th October and 22nd November 2007
and 25th January 2008

Representation:

Claimant : Ms. Caroline Keane, Sweeney McGann, Solicitors,
67 O'Connell Street, Limerick

Respondent : Ms Grainne O' Flaherty, Alex O'Neill & Co, Solicitors,
1 Cecil Street, Limerick

The determination of the Tribunal was as follows:

Respondent's case:

The managing director in his evidence told the Tribunal that he makes all the decisions regarding employment matters. He was surprised to get form T1A from the claimant. Witness was in Shannon on 16th March 2006 when he received a telephone call from the service manager stating she was having difficulties working with the claimant and suggested he meet him to try and resolve the matter. The service manager could not do her job because of complaints from customers. It was felt that if he met with him on a one to one basis and start the disciplinary process that the claimant

would improve. He had spoken with the claimant in July 2005 as witness and the service manager were going to be on holidays on the same week. Another member of staff, E was trying to do both jobs and she had a lot of difficulties with the claimant that week. Witness spoke to him and said that they would all need to be cordial and that he would need to improve. It's a small network of staff where people interact on a daily basis. The business is primarily sales and service. Some of the service engineers have been with the respondent a long time and they don't always get to go back to the same customers every time. If the workmanship is not of equal standard then one member of staff might have to take the flack if a job was not done properly by a colleague.

On 16th March 2006 he asked the service manager to set up a meeting for 4.30pm and she organised a local call for the claimant that afternoon. As he was on route to the office he was contacted by the service manager saying that the claimant was waiting and he also wanted to meet witness. Having arrived back early he asked the claimant to the meeting room. The claimant seemed relaxed and his demeanour was very casual. Witness expected to have to outline areas where he was not happy with the claimant and he also expected the meeting to become heated but that did not happen. The claimant said he knew things were not working out and when witness asked who was to blame the response was "nobody, just one of those things". Witness admitted he does not like having to discipline staff and while he has been with the respondent for twenty seven years and had to dismiss staff previously, he never dismissed summarily. He did not dismiss the claimant and it was not his intention to do so. The service manager said the claimant wore her down. He was casually discussing with the claimant how it was sometimes hard to work together and he then said to him "will we call it a day so", but he never said he was letting him go. There was no reason the claimant would not have raised the issue if he was in any doubt. He never asked the respondent if he was being dismissed. He then told the claimant he would give him a weeks pay in lieu of notice and he did not have to work out his notice plus he would pay any other outstanding entitlements. The claimant was not upset.

Witness then suggested to the claimant to gather his belongings and he emptied his van. He then helped him put his belongings in the jeep and he offered to drive him home. When they were on route to his home the claimant commented as they passed by one of their competitors that they had offered him a job some time ago. The journey took about twenty minutes and there was no unpleasant silence during that time. The claimant was not an exemplary employee but witness did not feel comfortable disciplining him. He accommodated the claimant when his wife was ill and when he had an injury at work he was out for eight weeks and was paid his full salary during this period. After the claimant left, the respondent heard that the injury was not in fact work related and he felt that the money paid by the company at that time should be re-paid by the claimant. The respondent accepted the claimant's word at the time.

In cross-examination witness said that as far as he was aware the claimant got a copy of the disciplinary procedures however he was unable to locate the claimant's contract of employment. It was part of the service manager's role to make comments on how the claimant was performing and witness was happy that the claimant was fully aware he was not happy with his work performance. While the service manager would have spoken to the claimant on numerous occasions but it was more an informal chat rather than invoking the disciplinary process. It was the intention of witness to invoke this process on 16th March 2006. If it was coming to the end of that process he was aware that the claimant was entitled to have a witness present.

In answer to questions from Tribunal members witness said the claimant did not claim personal injury in relation to the injury at work. There were also complaints in relation to the other five service engineers. The service engineers sell and service air compressors. When asked if he

dismissed the claimant on 16th March 2006 his response was “don’t know”.

Evidence was also heard from a service engineer who had worked with the respondent for four years. In relation to the claimant’s injury he said this did not happen at work. The claimant told him he had been playing soccer when he injured his shoulder and he told witness that he was going to have an “accident” at work. When the claimant discovered that witness was going to give evidence in this case he told him he had only been joking regarding the soccer injury.

In answer to questions from Tribunal members witness did not tell the respondent at the time about the claimant’s “story” regarding the accident as he felt it was none of his business.

The administrative manager and supervisor of the claimant was also the service co-ordinator of the engineers with the respondent. Among her tasks was to ensure that the engineers including the claimant performed their jobs to the satisfaction of the company and its customers. The witness outlined the difficulties she had with the claimant. These included being absent without notice or permission from his allocated work place, the storing of parts in his vehicle without authorisation, his failure to properly fill in time work sheets and his general inconsistencies at work. She “would have” received complaints from customers about his work. The witness met with the claimant on at least two occasions and gave him warnings about his behaviour and told him he had to improve. However, she never issued the claimant with a formal verbal or written warning nor brought specific complaints to him. The manager dealt with those issues. She was constantly “nagging” him about his duties particularly over the time sheets and was in an “uphill struggle” in her general interaction with the claimant.

The witness felt that the claimant had a general lack of respect for her and she was relieved to hear that his employment had been terminated. By that time she had lost trust in the claimant’s approach to his work and felt “he was not putting “100% into his job”. The witness also described in some detail a mishap that occurred to the claimant at work in early January 2005. When the manager told her in March 2006 that the claimant was “gone” the witness was not interested in knowing the circumstances of his departure.

The company accountant stated he had no direct involvement in the claimant’s case as regards his departure from the company. The claimant did not ask for a letter of dismissal and the witness was satisfied that the company discharged all payments and entitlements due to the claimant. The witness also referred to circumstances relating to the claimant’s accident at work.

Claimant’s Case

When the claimant commenced employment with the respondent in July 2004 he brought with him training and experience with refrigerators but not in compressors. He got some on the job training for the latter together with lessons on how to fill in worksheets. While his supervisor would “get on to him” about those sheets he never got the impression that his delay in submitting them seriously frustrated her. The witness accepted that he did not treat the timely furnishing of those sheets as a major issue. In addressing stock in his van, and other reported incidents about his work the claimant maintained that his employer never spoke to him about those issues. He was never issued with formal warnings nor made aware that some customers were complaining about his work. However, at a meeting he did apologise to another employee if he caused any offence to her. The witness also referred to his accident at work and related matters.

In mid March 2006 his supervisor contacted the claimant and invited him to call to the manager’s

office the same day. He was not told the nature of that meeting. The claimant could not give an explanation for his passivity in accepting his dismissal during the course of that meeting. According to the witness the manager told him at that meeting that “it’s not working out, can’t put my finger on it” and added that the claimant probably had another job to go to. The manager also said that the claimant was to get a week’s pay in lieu of notice. Even though the manager did not explicitly tell the claimant he was being dismissed the witness was in no doubt that this was the case and that he did not misunderstand the contents and message been given. One reason he did not challenge that decision at the time was perhaps shock at that unexpected news. The claimant said that the atmosphere at that meeting remained calm and relaxed. The manager described by the claimant as sound drove him home following that meeting.

Determination

Based upon the evidence adduced at the hearing, the Tribunal finds that in the absence of proper procedures by the respondent, the claimant was unfairly dismissed. In the circumstances, and loss having been established, the Tribunal awards the sum of €7,078.50 to the claimant, being eleven weeks covering the period 16th March to 2nd June 2006 inclusive.

The Tribunal also notes that the claims under the Minimum Notice and Terms of Employment Acts, 1973-2001, and the Organisation of Working Time Act 1997 were withdrawn during the hearing on 22nd November 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

