

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD25/2007

WT6/2007

MN80/2007

against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Ms J. Winters
Mr. P. Woods

heard this claim at Dublin on 11th January 2008
and 16th April 2008

Representation:

Claimant: Ms. Finola Freehill BL instructed by Augustus Cullen & Co., Solicitors,
7 Wentworth Place, Wicklow

Respondent: Ms. Pauline Codd BL. Instructed by Mr. Andrew Tarrant, Tarrant & Tarrant,
Solicitors, Law Chambers, Arklow, Co Wicklow

At the outset of the hearing the claim under the Organisation of Working Time Act, 1997 was withdrawn.

Claimant's Case

The claimant told the Tribunal that he started work in May 05 with the respondent and previously had his own plumbing business, and developed his own way of doing jobs. Terms with JB were 8 to 5 o'clock, 5 days a week. He said at the outset that he couldn't do overtime or Saturdays for family reasons. They were a decent crowd to work for and the staff also. He said he sought a raise in June 2006 and was given it. He outlined his experience to the company at the start, and explained

that he had no experience of oil-fired stoves & under-floored heating. His holiday entitlement was 21 days and he had thirteen days left when the job finished. He asked JB senior well in advance for a day off near Christmas and was told it was ok. On 14 December 2006 he reminded JB junior about the day off. JB said no chance – they were too busy. The claimant needed the day off so he was told to go, and to leave the job. JB snr. agreed with his son and the claimant was given his P45 the following day. The claimant said that there was no doubt he was fired, and that he could not change his holiday arrangement as it was booked well in advance. He denied doing separate private work and also denied being asleep on the job – he was only lying on the floor listening to the radio during a tea break. He had not been approached about the standard of his work and he was not told some customers would not deal with him. He received no written or verbal warnings. He is still seeking employment. He did a few days here & there and trained in working with wood pellets.

Respondent's Case

JB the director told the Tribunal that he knew the claimant as he frequented his shop and the claimant told him that he was looking for a job. He knew the claimant's late brother who on occasion undertook work with the respondent. The director and his father met with the claimant and discussed how the business was run and how it had developed. It provided a very personal twenty-four hour service. The claimant was asked if he would work on Saturday. The respondent employed fourteen staff and it was run as a family unit. The claimant told him that he did not have a problem with plumbing as he had done everything but that he did not know much about oil-fired cookers. The director's wife worked in the office for the past twelve years and the director concentrated on selling. If employees needed time off they requested it in the office. As the respondent was very busy it needed good competent plumbers. The claimant was never available to work Saturday and he worked two Saturdays in total. The claimant was a good plumber and was willing to try and he did the basics. A customer of many years complained about the claimant's work and told the director that a second year apprentice was more competent than the claimant. The director discussed this with his father and he told the claimant that he would have to improve. The director felt that the claimant never respected him as his boss. An employee, MOB was very helpful to apprentices and had received awards for his training. A number of apprentices went on to establish their own businesses. The claimant told him that he found MOB very aggressive. The director could not get through to the claimant.

The claimant undertook work on a house on 26 July, he made a mistake and the owners sent the respondent a bill for €1,800. The director spoke to the claimant and he was nonchalant about it. The claimant did not like to be challenged and he became argumentative. A toilet that the claimant fitted in a house was crooked and as a result a customer withheld €25,000 from the contract until the respondent could get a replacement. On 22 August 2006 MOB had to go to repair a leak on a job that the claimant undertook. The director outlined other problems that he had with the claimant's work, which had to be rectified by another plumber.

On one occasion he found the claimant asleep on the floor and the claimant told him that he was entitled to a break. Prior to Christmas 2006 the claimant told him that he was taking Tuesday and Wednesday off and the director replied no way that employees were finishing work for Christmas on Thursday 21 December. The director refused the leave and told him that they were too busy. The claimant told him that he could not tell him what to do. He then told the claimant to take the whole week off. The claimant told him that he was finished on Thursday. He asked the claimant if it was a week's notice. He told the claimant that he took the toolbox out of the car. There was no argument and no discussion. His father first became aware of the claimant leaving when the director went to the office. The next day the claimant came to the yard, the director greeted him but

did not get a response. The respondent had never dismissed anyone.

In cross-examination asked that he was aware of his obligation as an employer he replied that he had given the claimant a verbal warning. The fact that he wanted the claimant to work on Saturdays was not in writing and all employees were expected to work on Saturday. The claimant was asked to work every Saturday but he always had an excuse. The claimant received an annual pay increase. Asked that the director's father told the claimant that he was very happy with the claimant's work he replied that his father would deny that. An apprentice was not allowed to use a reciprocating saw. Since the claimant left a reciprocating saw was never used by a member of staff. He did not dismiss the claimant, it was the week before Christmas and the respondent had commitments. He did say to the claimant that he may as well take the whole week off. He told the claimant to make his mind up and that he would have to refuse customers if staff were not available. The respondent did not have procedures in place at the time of the claimant's dismissal but this has now been rectified.

Determination

On the evidence adduced at the hearing the Tribunal find that the dismissal was fair and the claimant's case under the Unfair Dismissals Acts, 1977 to 2001 fails. The claim under the Minimum Notice and Terms and Employment Acts, 1973 to 2001 fails. As the claim under the Organisation of Working Time Act, 1997 was withdrawn no award is being made under this Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

