

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD770/2007

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr B. Garvey BL

Members: Mr. T. O'Sullivan
Mr. P. Woods

heard this claim at Dublin on 28th March 2008

Representation:

Claimant :

Mr Stephen O'Sullivan B.L., instructed by Ms. Aileen Fleming,
Daniel Spring & Company, Solicitors, 50 Fitzwilliam Square,
Dublin 2

Respondent :

Patrick Igoe & Company, Solicitors, 15 Carrysfort Avenue,
Blackrock

The determination of the Tribunal was as follows:-

Respondent's case:

The principal of the respondent's printing business gave evidence regarding the reasons for the claimant's dismissal. For some time prior to his dismissal he became aware that the claimant had gone to all the staff seeking their support as he did not want to work the 2pm to 10pm shift two Fridays every month. By agreement this shift had been up and running for a number of months. Witness felt he had always been fair and reasonable with the staff. On the day of his dismissal the production manager had asked him three times to do particular jobs and the claimant wanted to do the jobs in a different sequence. The delivery to the customer demanded the jobs to

be done. Prior to this another printer would be left with all the difficult jobs with the claimant doing the handymen. On one occasion witness received a call from a customer stating the claimant had told him that a particular job could not be done that night. It was subsequently done on the night in question. The respondent has lost three big clients because of jobs not being done on time. Witness is a qualified printer therefore he is aware of how long jobs take. The claimant had to be asked five times to get one particular job done. At the start of his employment there were no problems but by the second year it was like the claimant was running the place. When he was asked to do a job he would either refuse or do the work in a different order. When there is a specific need the job has to be done. To be competitive it is necessary to run the machines on double shifts. The claimant was employed to do the 9am to 5.30pm shift and he asked to change it to avoid traffic. He was not happy to go along with all the other workers. It was important to have staff there if a job needed to be done. The claimant rang the other printer at home asking for his support in refusing to do the late shift.

In cross-examination witness said that the two shifts were 7am to 3pm and 2pm to 10pm with an overlap of an hour to hand over work. These shifts had been running for six months before they were officially introduced in April 2007. In relation to grievance procedures witness said that if any of the nine employees had a problem they came to him. There were no written terms of employment at the time of the claimant's dismissal but they were now in place.

While the respondent is a non-union house, the employees had the right to join a union and the claimant told witness he was a member of a union. On 18th June 2007 the day of the claimant's dismissal the claimant agreed to revert to the 9am to 5.30pm shift and about two hours later he received a call from the union stating that he could not run the company as he wanted. He did his best and changed the shift but the claimant was browbeating him. The claimant did not ask to have a representative present on the day of his dismissal. A letter dated 6th July 2007 outlined the reasons for the claimant's dismissal. When asked about warnings he said the claimant did not turn up at work on Friday 18th May and the following Monday, 21st May he handed him a written warning.

Evidence was also heard from the plate manager who stated that his working relationship with the claimant was okay at the start of his employment but as time went on the claimant became more difficult. The claimant was cherry picking the jobs thus putting witness in the firing line when jobs were late and customers complained. At one point some printing plates were missing and they were subsequently found hidden at the back of a machine. There was no difficulty with any of the other workers. The claimant wanted to do the jobs in his own sequence or would not complete them all. Witness is a member of the union SIPTU.

In answer to questions from Tribunal members as to whether he was alleging that the claimant hid the printing plates, his response was that he could not do so.

The production manager told the Tribunal that she deals with the customers looking for quotations. She plans the jobs and prioritises them. At times when she needed a job done she found the claimant to be intimidating. She deals with the customers on a one to one basis and if she does not deliver the customer will complain. When she would ask the claimant to do jobs in a certain order he would want to do them his own way. If she asked him how long was left on a particular job his response would be to tell the customers to "f--k off". There were no problems with the other staff members. In this business everybody needs to pull together. The way the claimant was behaving it was damaging to the company. She is also a member of a trade union.

In cross-examination witness said that on the day of the claimant's dismissal she told the principal

that the claimant just would not co-operate.

In answer to questions from Tribunal members witness replied that she was responsible if jobs were late.

The Tribunal also heard evidence from the printer who worked alternate shifts with the claimant. The claimant would not stick to the schedule of work, would cherry pick the jobs and leave the difficult ones for witness. This meant that witness had to stay on late to get the work done. In the months leading up to the claimant's dismissal this happened on a weekly basis and he told the production manager on more than one occasion outside of work. It had got to the stage that he was thinking of leaving and he had worked with the respondent for seven years.

Claimant's case:

Following an informal chat with the respondent the claimant commenced his employment on 2nd August 2005. He was told his hours were 9am to 5pm. The claimant chose to work 7am to 3pm and he worked this shift from day one. The double shift started on 9th April 2007. He was willing to work overtime and at weekends and could work through the night in order to get the work done. In or around the 20th March 2007 when he was asked if he would do shift work he said that would not be a problem. He did shift work for eighteen years in the printing industry and in his previous job he worked less hours on a Friday. On the week of 9th April he did the 2pm to 10pm shift Monday to Thursday. He could not come in for the early shift on Friday as he had to bring his child to the doctor. The following week he was out sick and the principal of the company did not take the medical certificate from him. The other printer was out injured and witness came in to work on the Wednesday afternoon to get a job done. As the other printer was absent only one shift was being done that week.

The claimant requested a meeting on 10th May 2007 to discuss overtime as the other printer was out injured and a friend came in to help out. Claimant and the other printer were expecting to have a lot of overtime however the friend who was helping out was taking a lot of the extra work. On 14th June 2007 the claimant tried to talk to the principal about the shift hours and he spoke to him again on 15th June and explained his reservations and he was told it was agreed, but as far as the claimant was concerned it was not a foregone conclusion. At the end of that conversation the principal said he would talk about it on the Monday 18th June. On that day the claimant was in at 1.30pm and went to the canteen. The principal followed him in and asked was he prepared to work the Friday hours. This was not in the Registered Agreement of the Printing Industry. The claimant was told he picked his own hours. He was then asked if he was refusing to work the double shift and when the claimant put forward a proposal the respondent did not want to know. The claimant had no objection to working the agreed hours of 9am to 5pm but it would not be fair on the other printer. He then rang the Labour Relations Commission as he felt that the respondent was not approachable. He also rang his union. About twenty minutes later he was back at the machine and he heard the door closing and the principal said "f--k you and f--k your union, there's two weeks notice". He rang the union and the official in turn made contact with the respondent. He received notice of dismissal on 18th June 2007 and appealed his dismissal by letter dated 19th June 2007. On the 21st and 22nd June he was on holidays which had been pre-booked and he had a medical certificate for the following week therefore he was due back to work on 2nd July. When he rang the respondent he agreed that it was pointless having him return to work for one day. He never received any oral warnings and the written warning referred to he saw for the first time at the hearing of this case. He did not hide the printing plates. Neither did he cherry pick the work.

In cross-examination witness said that prior to 18th June 2007 he would have regarded the principal as being a reasonable individual. When asked if he intended leaving the respondent anyway his response was that it depended on the “proper job” becoming available. He denied that he followed his own agenda. He felt that there was a conspiracy to get rid of him.

Determination:

The Tribunal finds that in the absence of procedures the claimant was technically unfairly dismissed but by his own conduct he contributed to his dismissal and we award him the sum of €2,000 under the Unfair Dismissals Acts 1977 to 2001. The Tribunal notes that procedures are now in place.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

