

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee
MN217/2007
against

CASE NO.
UD329/2007

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: Mr L. Ó Catháin
Members: Mr. M. Forde
Mr D. McEvoy
heard this claim at Waterford on 10th April 2008

Representation:

Claimant: Derek Dunne BL instructed by Mr. David Burke, David Burke & Co., Solicitors, 24 Mary Street, Dungarvan, Co. Waterford

Respondent: Mr. Eamonn King of J.F. Williams & Co., Solicitors, Main Street, Dungarvan, Co. Waterford

The determination of the Tribunal was as follows:

Claimant's case:

The Tribunal heard evidence from the Claimant who commenced working for the Respondent in April 2004 and ceased working for the Respondent in January 2007. He was employed as a PVC fitter although he sometimes did construction or timberwork or deliveries. He also had driving duties bringing employees to work sites. His pay was €400.00 when he commenced which increased to €650.00, and he was paid €50.00 to collect his co-workers. He did not get pay-slips and his employer looked after his tax and p.r.s.i. He did not get a document about the terms and conditions of his employment.

The Claimant produced a form P60, which his representative pointed out showed an average weekly pay of €350.00. The Claimant explained that it was inaccurate as his take home pay was "€700.00 in cash".

The Claimant told the Tribunal that in February 2006 he was training two workers on a site and also working himself. He was up a ladder and the owner of the company asked him to check stock. He climbed down the ladder and asked the owner why he himself had not checked the stock. The owner became abusive and pointed his finger at him. He told the owner to take his finger away and he didn't. He laughed at the owner, took his tool kit off and left. The owner told him that he was the employer and to do as he said.

The Claimant outlined other concerns he had about safety issues and personal protection

equipment. He never asked the employer for more money; he asked the employer for his holiday pay. When he approached the owner (Circa January 2007), the owner told him “If you don’t like it you can f**** off,” and indicated that there were foreign nationals who could do the work. He was told that there were two other foreign workers who could take over the work from the four of them that were there and he took this to mean that his employment was ended. He then left and went home.

In cross-examination the Claimant denied that he said that there would be no more work if there was no more pay; he was enquiring about his holiday pay.

The Tribunal heard evidence from a former employee of the Respondent. He told the Tribunal that he was paid in cash, and did not get pay slips or terms of employment or a P45.

Respondent’s case:

The owner of the Respondent gave evidence to the Tribunal. He explained that the company supply and fit PVC fascia / gutters. They usually subcontract to builders.

In February 2006 he was going to a nearby town and he asked the Claimant if there was anything he needed. The Claimant said “find out your f***** self” and slid down the ladder. He threw his tool kit off in a rage and drove off. His nephew left with him. Some days later the Claimant called and asked for his job back. He gave the Claimant his job back. His nephew didn’t return.

He told the Tribunal that he does not abuse people that it is not his style. Regarding holidays he paid the Claimant for sixteen days and he was on leave for twenty-two days. The Claimant was not in a position to work for six of the days and he didn’t pay him for the six days.

On 3rd January 2007 the workers arrived at his house and he was handing the Claimant a list of the stock they would need and what work site that they were to go to. The Claimant told him that there would be no more work if there was no more pay. He told them that there would be no extra money “that’s out”. There was no mention of holiday pay. The Claimant drove off in and was “ina rage”.

Regarding the Claimant’s wages; the Claimant was paid circa €350.00. The employer produced a tax deduction card to the Tribunal. He told the Tribunal that the accountant told him how much to deduct and the accountant sent the information/ tax to the Revenue Commissioners. It was “total and utter rubbish” (regarding the wage of €700.00). He told the Tribunal that it would be of no advantage to pay him more than he was declaring because he would lose out in his tax returns, that the Claimant was an unskilled labourer being paid more than the minimum wage, and that he was not getting paid the money from clients to afford the wage of €700.00.

Regarding the safety issues they were “total and utter lies”. The company have to have safety statement to go onto a building site and the workers have to have safe passes. Also the builder has to give an induction course.

In cross-examination the owner denied paying the workers €600.00 to €700.00, as most carpenters and electricians don’t get €700.00 and therefore why would he pay the employees that amount. On Friday he would write down what he paid and give this to his accountant who would then send to the Revenue Commissioners. He paid them in cash as “a lot of people did not have bank accounts and a lot of people wanted to be paid in cash”.

The Tribunal heard evidence from a former employee of the Respondent. He told the Tribunal that he was from Poland and he commenced working for the Respondent in February 2006. He does the same work as the Claimant did. He remembered the morning in January 2007. They called to the owner's house as usual to get the list. The Claimant said to the owner "more money" and the owner said he would not give money. The owner gave him holiday money when he went to Poland. When asked by the Tribunal how much he was paid he said it was about €400.00 at the time he left and in January 2007 it was about €350.00.

Determination:

It was agreed at the outset to advance this case as a Constructive Dismissal Case. The Tribunal noted the clear conflict of evidence between the various Parties in respect of pay. Based on all the evidence before the Tribunal, the Tribunal are of the opinion that a case for Constructive Dismissal does not exist.

The claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

The claim under the Minimum Notice and Terms Of Employment Acts, 1973 to 2001, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)