

EMPLOYMENT APPEALS TRIBUNAL

Claims Of:
Employee

Case No.
UD1230/2006
MN815/2006

against

2 Employers

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. P. Hurley

Members: Mr. G. Phelan
Mr. T. Kennelly

heard this claim at Limerick on 23rd January 2008

Representation:

Claimant: Mr. Patrick Barriscale, Holmes O'Malley Sexton, Solicitors,
Bishopsgate, Henry Street, Po Box 146, Limerick

Respondent: Mr. Mark Nicholas B.L., instructed by Culhane Judge & Co., Solicitors,
The Square, Newcastle West, Co. Limerick.

The determination of the Tribunal was as follows:

Preliminary Issue:

Before the Tribunal could determine the substantive claim by way of full Hearing, a preliminary issue arose regarding the correct title and the legal status of the Respondent Company for the purposes of the employment relationship.

Following submissions by the legal representatives for the Claimant and Respondent, the Tribunal found that the case could proceed to a full Hearing against the named Respondent, having first given due regard to those submissions in respect of the respondent's employer registered number, as well as to copies of the claimant's P60s and P45, which confirmed that information.

The Tribunal heard that the fact of dismissal was in dispute between the parties.

Claimant's case:

Evidence was heard from the claimant, who told the Tribunal that he worked in a part-time capacity

from 1990, and then as a fulltime employee of the respondent since 1992. He was initially employed as a truck driver. As the business developed the respondent worked on sales, and the claimant said he dealt with invoicing, and with cash transactions. However, his principal duty was deliveries, completing two runs each day: first, local deliveries were made by transit van; secondly, larger deliveries were made to the surrounding areas in a cargo truck. He started work at 09h.30 a.m., and his helper normally arrived at 10h.00 a.m., each day.

On the 10th August 2006 the claimant came on duty, and obtained the keys of both the transit van and the cargo truck in order to commence the sequence of unloading pallets from the previous day's operations, and reload deliveries due that day. Nothing occurred, he spoke to one of staff, and was told that the cargo truck was being unloaded first. He understood that there was agreement to unload and reload the transit van first. He went to the respondent, explained the situation and asked for help. The claimant said that the respondent asked 'what's your hurry', and was told that the staff were unloading the cargo truck first and to wait. The claimant felt that that made no real sense, as it would delay the deliveries planned for that morning. He told the respondent that he had 'better take this so', meaning the load sheet. Frustrated, he said he left and went home.

He went to see the respondent later that same evening, who told him that he had to first apologise to one of the other staff with whom, the claimant said, he had a history of a strained relationship. The respondent alleged that the claimant had not addressed that individual in an appropriate manner, hence his instruction to apologise to that individual. The matter was not resolved that evening.

On the 11th August 2006, the claimant went to work. He met the respondent, who told him he had to apologise to a second member of staff also. The claimant said that he did not feel it appropriate to have to apologise to either, at which point the respondent told him that he wasn't 'satisfied with your work'. The claimant said he had never been informed of any complaints about his work during the course of his employment, but that during this conversation a reference was made to a complaint, which the respondent claimed was received on 9th August 2006, the day prior to the events. No details were given to him, the claimant said, and he was not given an opportunity to refute the allegation. The respondent told him 'I'm letting you go' and although he looked for an explanation the respondent repeated that he was 'not satisfied' with his (the claimant's) work. He was asked to return at lunchtime on 11th August 2006, at which stage he was given a letter of dismissal. He also received payments due to him by way of salary, payment for a week in lieu, and holiday pay. He did not receive his P45, or P60 at that point.

He had looked for alternate employment since August 2006, without success. He believed that at almost fifty-eight his age was now a factor in his attempts to seek further employment. Other family members were maintaining him, financially.

In cross-examination, the claimant repeated the details surrounding the events of 10th August 2006. The claimant disagreed that the cargo truck was always unloaded first, and then the transit van, and that the sequence was reversed when reloading both vehicles. He agreed that two other staff members were on duty, unloading, on 10th August 2006. The claimant denied blocking the loading of the cargo truck, and instead explained that he parked the transit van as normal, given that it was first out of the yard each morning. He denied using abusive language towards, or that he shouted at either of the two other members of staff who were engaged on loading duties that morning. He denied having anything against those two staff, instead stating that his main difficulty arose with the respondent over the manner of the unloading and reloading of the vehicles. He agreed that he left the respondent's premises, but denied that he left the respondent without a driver. He said that he left the job that day due to frustration

The claimant agreed that he went to speak to the respondent on the evening of 10th August 2006, but denied asking him if there was a conspiracy against him. The claimant disagreed with the respondent's contention that he was only prepared to have the loading done his way. When asked to apologise to the two other members of staff, he refused. He believed that he had no reason to do so as he had not used abusive language towards them, and he was still of that view when he returned to work on the morning of the 11th August 2006. He denied asking for his final salary that day, and stated that it was only then the respondent raised the issue of alleged complaints about his work. He maintained that the respondent told him 'I'm letting you go'. He agreed that there had been a previous difficulty between him and one of his former colleagues, which had occurred in December 2005.

He repeated that he believed he was dismissed on 11th August 2006, and cited the respondent's letter of that date in support of his claim.

In reply to questions from the Tribunal, the claimant agreed that he was wrong to leave the job that day, and stated that he went to the respondent that evening to try to resolve the matter. He could see no reason why he had to apologise to the other two employees. He had never looked for payment for any extra hours worked over and above his agreed hours. He stated that in addition to the respondent's letter, his payslip was also ready for him on his return on the 11th August 2006. He repeated that the first he heard of alleged complaints about his work, during the entire period of his employment with the respondent, was on his last day of work with him.

Respondent's case

The respondent gave evidence. He confirmed that the company was in liquidation, due to trading difficulties, and that all employees had been let go.

He confirmed that the claimant was a valued employee, who he employed as a driver in a part-time capacity from 1990, and then fulltime from 1992. He agreed that one helper started work between 10h.00 and 10h.15a.m. The order of unloading and reloading was to unload the cargo truck first, followed by the transit van, and to reverse the sequence when reloading both vehicles. He said that there was no real reason why he adopted that system. He said that loading could not take place in the yard, and that the transit van was usually parked on the road.

On 10th August 2006, a member of staff drew his attention to problems about the unloading and reloading of the two vehicles. On this occasion, the transit van was blocking the cargo truck. He went to move the transit van, at which point the claimant asked what was happening. He told the claimant to do his job, as always, in sequence. The respondent said that the claimant then raised his voice, used bad language, as well as verbally abusing two other colleagues, accusing them of slowing him down. He said that the claimant wanted the unloading and reloading done his way, and when it wasn't he handed back the load sheet and walked away. The claimant came to his home that evening, and asked if there was a conspiracy against him. The respondent denied any such belief. The claimant asked him if his sequence of unloading and reloading would operate the following day, which the respondent refused. The issue was not resolved that evening.

The claimant returned to work on the morning of 11th August 2006, and he informed him that he (the claimant) would first have to apologise to his two colleagues. The claimant would not apologise, and asked for his payments. If an apology had been made, the matter would have ended and the claimant could have continued working for the respondent. To support his position the

respondent referred to a previous occasion when another employee had to apologise to a member of staff, and who kept his position within the company.

There were no complaints about the claimant's work, and the respondent denied ever telling the claimant that he was letting him go. He maintained that the claimant refused to apologise, and that it was he who asked for the letter dated the 11th August 2006.

In cross-examination, the respondent said that the van was rarely unloaded first but agreed, when questioned, that it made sense to do so. He agreed that the claimant was very conscientious about getting tasks completed and deliveries out on time.

The respondent said that the two colleagues did not hear the abusive language allegedly used by the claimant. Notwithstanding that fact, the respondent maintained that the claimant had used abusive language. He agreed that he asked the claimant about jobs he had undertaken, but only did so to ensure they had run smoothly. He said that he did not want the claimant approaching customers in an irate manner. He denied telling the claimant that he had not completed his job properly and thus could not understand why the claimant approached and brought a customer to him to clarify an issue, after his dismissal. He failed to explain why the claimant did not receive a P45.

In reply to questions from the Tribunal, the respondent said that the two employees had not asked for an apology from the claimant. Nor was he aware of the Statutory Instrument to deal with Grievance and Procedures.

A **second** witness, one of the two individuals working that morning, gave evidence. He explained that he met the claimant on his way to work and that he was told that he (the claimant) wanted the transit van unloaded first. As this was not normal practice, the witness asked the respondent if systems had been changed.

He stated that the van was parked across the cargo truck, blocking it on the day in question. As there was no change to company procedures the van was moved. He said that the claimant came to the area and in an exchange between them asked why the transit van was not unloaded or reloaded. The respondent also appeared, and voices were raised. He said that the term 'useless f....s' was levelled towards him, and another colleague, the claimant accusing them of 'slowing work down'. Words were exchanged between the claimant and respondent, at which point the claimant handed papers back to the respondent and he walked away. He confirmed that it was company procedure to unload and reload first the cargo truck, then the transit van, and reversed when reloading both vehicles. Except for the one incident, he had no difficulty with the claimant.

In cross-examination, the witness agreed that he was involved in a previous altercation with the claimant and with other employees, for which he had to apologise in order to retain his job. He would have considered it awkward if the claimant had not apologised for his abusive language. However, he agreed that he had not asked for an apology, but said that he felt strongly about the words used. He accepted that the only person who insisted on an apology was the respondent.

A **third** witness gave evidence that related to the events of the 10th August 2006. On the day in question he was engaged on yard duties, on unloading, reloading and in tidying. While so engaged, he explained that he observed the second witness go to the respondent's office, from which they both emerged and went to the yard. He said he was instructed to unload the cargo truck, at which point the claimant then appeared, accused them of 'slowing him down' and used abusive language towards him. He said the claimant was very irate that the transit van was not done first.

He said the claimant left and did not reappear that day.

In cross-examination, the witness agreed that the transit van could be unloaded and reloaded first, but that this did not occur very often. He did not insist on an apology either, and said if he had wanted one he would have spoken directly about it to the respondent. He had no difficulty with the claimant's work.

In reply to questions from the Tribunal, the witness said that he was not made redundant but that he had to discuss the matter further with the respondent.

Determination:

The Tribunal having heard the evidence of the Claimant and the Respondent and the witnesses called, and having deliberated on the relevant facts determined as follows.

There was a conflict of evidence between the parties in relation to the termination of the Claimant's employment on the 11th August 2006. However, the Tribunal prefers the evidence of the Claimant and finds accordingly that a dismissal occurred in relation to his employment.

The Claimant had, at the time of the termination of his employment with the Respondent and its predecessor, a record of long and uninterrupted service both as a part time employee and a full time employee. The dismissal of the Claimant from the Respondent's employment was procedurally flawed in that the Respondent gave the Claimant no explanation as to why the Respondent was dissatisfied with the Claimant's work. Furthermore the Claimant was given no opportunity to address any such perceived defects or problems with his work. Also the witness called by the Respondent clearly stated that he did not seek an apology from the Claimant.

In all the circumstances, the Tribunal finds that the Claimant was unfairly dismissed within the meaning of the Unfair Dismissals Acts, 1977 to 2001 and the Tribunal unanimously orders reinstatement of the Claimant backdated to the date of the dismissal, 11th August 2006. The Tribunal notes that the Respondent company went into liquidation on a date subsequent to the dismissal of the Claimant.

The Tribunal finds that the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, must be dismissed, having determined that re-instatement to the date of dismissal is the appropriate remedy.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)