

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee
UD997/2007

CASE NO.
MN771/2007

Against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney

Members: Mr G. Phelan
Dr. A. Clune

heard this claim at Nenagh on 9th June 2008

Representation:

Claimant(s) :
In Person

Respondent(s) :
In Person

The determination of the Tribunal was as follows:

Claimant's Case

The claimant gave evidence that he commenced working for the respondent on the 16th April 2006. During the first 6 months of his employment he was very happy and made many new friends. A new supervisor then became very unpleasant towards him and he felt he was being laughed at by his supervisor on an ongoing basis.

The claimant gave evidence that on the day of his dismissal he was operating a forklift. He was moving pallets from one area to another in the warehouse. He had transported two or three sets of pallets when his supervisor began shouting at him telling him to get down off the forklift. He had moved the pallets on his own initiative as his supervisor would not tell him where they should be

stored. He got down off the forklift when instructed to do so and began to carry out a different task. His supervisor then shouted at him to stop and go to the office.

The claimant crossed the yard along with his supervisor to go to the manager's office. On the way to the office his supervisor pulled at his coat and they both fell to the ground. During the incident the claimant had tears in his eyes and was very afraid. When he reached the manager's office he told him about the incident and the manager told him to go home. The claimant replied that he wanted to see the owner. The manager then brought him to see the owner at his premises in Portlaoise. They were accompanied on this journey by another polish worker. The claimant explained what had happened to the owner and the owner told him to go home. He asked the owner if he was being dismissed and the owner replied "you can understand it as you wish".

The claimant then reported the incident to the Gardai. He gave evidence that he was unemployed for approximately three weeks and is currently in employment. He agreed under cross examination that he had been warned about his driving of the forklift on previous occasions.

Respondent's Case:

The witness for the respondent gave evidence that he was employed as a supervisor for the respondent company. On the day the incident occurred the claimant had been operating a forklift. The witness had previously instructed the claimant not to operate the forklift but accepted that he had allowed him to do so on the day in question. He had told him where to place the pallets. When he discovered that the claimant was not carrying out the task correctly he asked him to get off the forklift. He admitted that he had done so in a raised voice but denied shouting at the claimant.

The witness went on to give evidence that the claimant and himself then went to the manager's office across the yard. He did not put his hands on the claimant and they did not fall to the ground. He did not laugh at or insult the claimant in any manner. He told the manager what had happened and then left the office on his own. He denied that he had dismissed the claimant at any stage. He had no further contact with the claimant after that day.

In reply to questioning the witness stated that it was his understanding that the claimant had not been dismissed. He did not have the power to dismiss the claimant. He confirmed that the claimant had never received a written warning and that the claimant had been replaced in his employment.

Determination:

The Tribunal is satisfied that on the balance of probabilities and the uncontested evidence of the claimant regarding his conversation with the owner of the business he was left to understand that he was dismissed. The claimant obtained work in a very short space of time and therefore mitigated his loss and we award him the sum of €800.00 under the Unfair Dismissal Acts 1977 to 2001.

The Tribunal is satisfied that the claimant was paid one weeks notice under the Minimum Notice and Terms of Employment Acts 1973 to 2001 and thereby awards him €346.00 being the equivalent of a further one weeks notice under the Act.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

