

EMPLOYMENT APPEALS TRIBUNAL

Claims Of:
Employee
MN102/2008
against

Case No.
UD98/2008

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
Ms. H. Kelleher

heard this claim at Clonmel on 25th July 2008

Representation:

Claimant: Ms. Máire McMahon, Donal T. Ryan, Solicitors,
88/90 Main Street, Cashel, Co. Tipperary

Respondent: Mr. Philip Moloney B.L. instructed by Ms. Mary Cunnane, Solicitor,
Aras Ide, Foynes, Limerick

The determination of the Tribunal was as follows:

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

The respondent is a family business working in the haulage industry. The claimant commenced employment with the respondent on the 13 November 2006 and his employment ended on the 5 January 2008. Witness A for the company stated that when an employee commences employment with the company, the new employee is informed that he could be doing different kinds of haulage at any location in Ireland.

When the claimant commenced employment with the respondent he was travelling from his home in Rosslare to work on the Arklow bypass. The work on the Arklow bypass was due to last for nine months. After a period of time the claimant asked for a travel allowance and he received this.

The claimant remained working on the Arklow bypass until July 2007. When the work was

completed Witness A asked the claimant if he would work in Cashel and the claimant agreed to this. Witness A gave evidence that he was surprised the claimant agreed to work in Cashel as it was quite far away from Rosslare. It was the claimant's evidence that he was aware that the company had other work in Limerick and in Cork. The claimant stated that he was a flexible employee. However, he told Witness A that he only wanted to work on the Cashel bypass, as he liked the work.

Initially the claimant slept in the lorry as the distance from Rosslare to Cashel was too far for him to travel. He later rented an apartment. Witness A told the claimant that he would either pay for an apartment or pay the claimant travelling expenses. Both were paid to the claimant for a period of time but later Witness A paid only for the apartment.

In or around December 2007/January 2008 the claimant telephoned Witness A to say he no longer wanted to rent the apartment. Witness A thought this was unusual, as the claimant had told him that he needed the accommodation. The claimant stated in his evidence that he was originally from Cashel and he had arranged to stay in his family home. The claimant did not inform Witness A of this.

The Christmas break commenced on the 19 December 2007 and the claimant was due back to work in or around the 8 January 2008. The claimant received a telephone call from Witness A on the 5 January 2008. Witness A told the claimant the apartment was no longer available and the claimant did not have a problem with this.

Witness A told the claimant during this telephone call that he was making some changes and that he had 6/8 weeks work in Limerick for the claimant. Witness A said in his evidence that he was making a change for a period of time to facilitate the request of another employee. He intended to switch this employee to the claimant's job for a period of time as it was the easiest job, however he did not explain this to the claimant on the 5 January 2008.

The claimant told Witness A that the work was too far away for him as he lived in Rosslare. Witness A confirmed to the claimant when asked, that another employee would carry out the claimant's work in Cashel. The telephone call ended with the claimant stating that he would not go to Limerick as it was too far. He told Witness A, "I'll be talking to you." The claimant did not contact Witness A after this and Witness A did not contact the claimant. He later heard the claimant had succeeded in securing new employment. Another employee is carrying out the work the claimant did in Cashel.

The claimant gave evidence relating to loss.

During cross-examination Witness A stated that when the claimant commenced employment he did not tell the claimant he would only carry out mobile tar work. If the claimant had accepted the work for 6/8 weeks in Limerick, Witness A would have returned him to Cashel at the end of this period. Witness A considered the claimant to be a flexible employee from the time that he had agreed to work in Cashel.

During cross-examination the claimant stated that Witness A did not make it clear to him on the 5 January 2008 that the change to Limerick was temporary. The claimant stated that he was employed specifically to work on the mobile tar plant and this work was ongoing in Cashel. The work in Limerick was different from the work he was employed to do.

It was put to the claimant that he was not dismissed but had chosen to leave. The claimant replied that he was replaced. The claimant stated that Witness A told him that after the 6/8 weeks in Limerick the claimant's lorry would be disposed of. The claimant thought this meant that Witness A would also end his employment.

In reply to questions from the Tribunal, the claimant stated that he did not tell Witness A on the 5 January 2008 that he was only interested in working on the mobile tar plant.

Determination:

Having heard the evidence of both sides the Tribunal finds that no dismissal took place as the claimant could have remained in his employment with the company. The claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Accordingly, 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)