

EMPLOYMENT APPEALS TRIBUNAL

Claims Of:

Employee

Case No.

UD527/2007

MN384/2007

WT166/2007

against

2 Employers

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. P. McGrath B.L.

Members: Mr. P. Pierson
Ms. E. Brezina

heard this claim at Portlaoise on 6th February 2008 and 11th April 2008 and 26th May 2008

Representation:

Claimant: Mr. Michael Binchy B.L. instructed by Ms. Melody Revington, Tiernan & Co.,
Solicitors, 144 Lower Baggot Street, Dublin 2

Respondent: Mr. Tommy Taylor, 22 Cypress Park, Templeogue, Dublin 6W

These claims were heard simultaneously with UD528/2007, MN385/2007 and WT167/2007.

The determination of the Tribunal was as follows:

The Tribunal heard that dismissal as a fact was in dispute between the parties. There was also a conflict between the parties in relation to dates.

Respondent's Case:

The Managing Director (hereinafter MD) of the company gave evidence to the Tribunal. MD stated that the claimant was an excellent employee. The claimant suffered an injury at work in November 2006. The company paid the claimant's wages until he returned to work on Tuesday, 9 January 2007. MD asked the claimant to get a medical certificate stating he was fit to return to work. MD explained to the claimant why he needed this certificate. MD subsequently received the

certificate the following day and the claimant returned to work. The claimant worked the remainder of that week.

The Contracts Manager (hereinafter CM) gave evidence to the Tribunal. It was the norm that CM telephoned the employees on a Sunday to tell them what site they should report to the following morning. CM telephoned the claimant on Sunday, 14 January 2007 and asked him to attend at the respondent's yard on Monday, 15 January 2007. CM later received a telephone call on the 14 January 2007 from MD's father who was very ill at that time. MD's father told CM that the claimant had telephoned him and was abusive towards him

On the 15 January 2007 the claimant was wearing inappropriate clothes for work. CM asked the claimant to return home and change his clothes. The claimant did not return to work that day or the following day the 16 January 2007. CM contacted the claimant who told CM that he was "finished with the company". CM asked the claimant if he was sure about this and the claimant confirmed he was.

Claimant's Case:

The claimant stated in evidence that he returned to work on Tuesday, 9 January 2007 and he was asked to get a medical certificate. He brought the medical certificate in on Thursday, 11 January 2007 but he worked on Wednesday, 10 January 2007. When the claimant attended at the respondent's yard on Thursday, 11 January 2007 he was not given work to do and he was not spoken to for most of the day. After some time MD approached him and asked why he was not wearing his work clothes. The claimant returned home but later that day he attempted to find out what location he would be working at the following day.

The claimant contacted MD's father who was the boss of the company. The claimant telephoned him three times. MD's father asked the claimant to telephone CM. The claimant telephoned MD's father again who shouted at him. The claimant told MD's father that if he did not get work from the company he would have to get legal advice. MD's father then told the claimant there was no work for him.

The claimant gave evidence relating to loss.

During cross-examination the claimant stated that he did not receive a telephone call from CM. CM's telephone records were submitted to the Tribunal. The claimant confirmed that his telephone number was on the telephone records. The records showed that calls were placed to the claimant's telephone. The claimant stated that often a colleague answers his mobile phone, as his colleague has a better understanding of the English language than the claimant.

Determination:

The Tribunal has considered the evidence adduced by both parties. There is a clear conflict on the evidence. There was very little commonality in the evidence concerning dates, venues, conversations and telephone calls were all at odds with one another. The Tribunal cannot reconcile the evidence. The onus is on the employer to establish that any dismissal, which occurred, was fair. In essence the employer is stating that there was absolutely no dismissal.

The claimant stated that he was dismissed over the telephone by MD's father now deceased. It is almost impossible to confirm this version especially in circumstances where it is clear that the claimant's own understanding of English may be limited and where it was unusual that he would have bypassed up to three line managers and gone straight to MD's father.

The only definite piece of evidence is two telephone calls placed by the Contracts Manager to the claimant some three or four days after the alleged dismissal. This does not prove anything other than the fact of contact after the claimant believes he was dismissed.

Through misunderstanding or otherwise the claimant considered himself dismissed but the Tribunal accepts the evidence of the company that there was no company decision to dismiss the claimant. The Tribunal attaches the same weight to the fact that throughout his sick leave the company had treated the claimant fairly and it would not therefore be in the company's interest to immediately dismiss him on his return. 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.

The claim under the Organisation of Working Time Act, 1997 was withdrawn during the course of the hearing.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)