

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD883/2007

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Mr G. Phelan
Mr. T. Kennelly

heard this claim at Limerick on 22nd September 2008

Representation:

Claimant(s) :

No representation listed

Respondent(s) :

Mr. Ambrose Downey, IBEC, Mid West Regional Office, Gardner House, Charlotte Quay,
Limerick

The determination of the Tribunal was as follows:-

Background

This case arises out of the termination of the claimant's employment with the respondent company on the 20th of August 2007. It is common case that the claimant left his employment of his own accord and that no dismissal notice was actually received by him and consequently this matter is treated as a claim for constructive dismissal.

Claimant's Case

Evidence on behalf of the claimant was given through an interpreter by the claimant himself. He was employed by the respondent company from the 29th of August 2002 until 2007. His job initially was the handling and stacking of timber products being made in the respondent's factory.

He was doing this for sometime and he found it to be heavy work. He did not have any assistance in relation to the work that he was doing and over the five year period of his employment with the Respondent he developed health problems including varicosities and low back pain. He himself attributed these conditions to the heavy work that he was doing. He had a number of absences from his employment particularly in the year 2007 and he made it known to his employers that he was having these health problems. His employers put him on different work, namely yard work, but he found this work even more difficult as it involved a considerable amount of lifting and bending. He said that when he was taken off the job in the factory that two men were required to replace him on that machine. He said that he felt that the company had not taken adequate steps to assist him in relation to his health difficulties and in particular he sought a severance package in or around 2006 to enable him to go back to the Ukraine to have a medical procedure undertaken that he could have done more quickly there than in this country. The company refused to give him this severance package and he felt somewhat victimised by this.

He further felt that the respondent had taken advantage of him by paying him less than the minimum rate of pay and in giving him excessively hard work to do and he thinks that this was because he was tied to them because he was working on foot of a Department of Trade Enterprise and Employment work permit which expired in July 2007.

He also said that he is presently on injury benefit and is not fit for work and is awaiting a medical procedure which he expects to have done in November.

Respondent's Case

Evidence on behalf of the respondent was given by the Branch Manager who indicated that the respondents were builders' providers and had a timber milling operation in which the claimant worked. About 45 persons were employed in this part of the business at the time that the claimant commenced employment and there are now about 35 persons. He said that he became aware in or about April 2007 that the claimant needed light duties. He moved him from the factory to the yard where he would be able to work at his own pace rather than having to keep up with the production from the machine. The new job was essentially a house-keeping job where he was obliged to keep the timber yard tidy. He said that he considered this to be the lightest work available in the business. He said that neither he nor the company ever dismissed someone because of a physical inability to do a job. He said that the claimant was not paid less than the minimum wage and he said that he felt quite hurt by some of the allegations being made by the claimant. He said that an investigation was carried out by the National Employment Rights Authority and that the company was found not guilty of breach of its obligations to the claimant. He said that the claimant asked for redundancy and no redundancy situation existed at the time and the company could not see their way to make him redundant. He said that the number of persons working on the machinery would depend on the product being produced at the particular time and this would be a decision made from time to time by the Mill Supervisor.

Evidence on behalf of the Respondent was also given by the Human Resources & Health & Safety Manager. He said that he became aware of the claimant's health problems in early 2007 and that he was put on light duties. He indicated that they did not want the claimant to leave. They had a high turnover of staff at the time and with regard to the issue of redundancy he said that when the claimant ultimately did leave that he had to be replaced. He said that there was quite a number of non-EU nationals employed by the company at the time and that generally on expiry of their work permits they were free to work for other employers and many of them sought redundancy or left.

He said that there were rationalisations going on in 2006 in other branches of the company and he felt that the claimant wanted to be included in this.

Determination

Having heard the evidence in this case the Tribunal fails to see how it can make a finding in favour of the claimant. The claimant left his employment of his own volition on the 20th of August 2007. The Tribunal finds that the employer acted reasonably in its dealings with the claimant in that it gave him lighter work when they became aware of his health difficulties. Though the claimant feels that the work was not strictly speaking light work nonetheless the Tribunal accepts the evidence of the employer that this was probably the lightest work available in the factory. It also stands to reason that keeping a yard tidy at ones own pace would not be as onerous as physical demands placed on a person servicing a machine on a production line type operation.

In all the circumstances it is difficult to see what more the respondent company could have done in all the circumstances. It is noted that the National Employment Rights Authority investigated the issue of non-payment of the correct rate of pay and that the claimant's complaint in this regard was not upheld.

In the circumstances the Tribunal finds that the claimant who found himself in unfortunate circumstances due to his ill health was not unfairly dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)