

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
Employee

CASE NO.
UD624/2008
MN555/2008

against
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: Mrs. M. Quinlan
Members: Mr. L. Tobin
 Mr A. Butler

heard this claim at Wicklow on 28th October 2008

Representation:

Claimant: (with the aid of an interpreter): Mr. Patrick O'Brien BL instructed by Mr. Gavin Mackay
solicitor of Spelman Callaghan, Solicitors, Corner House, Main Street, Clondalkin, Dublin 22

Respondent: XXXX.

Respondent's case:

The Tribunal heard evidence from the foreman of the Respondent company. He told the Tribunal that on several occasions he asked the Claimant to wear personal protective equipment (PPE) and the Claimant was given a first written warning on 13th March 2008.

He explained the events of 28th May 2008. The forklift driver saw a fire brigade truck in the yard and told him. He went to the yard and saw that the timber that was stored was on fire. The timber was re-cycled timber that was to be re-used. He asked the Claimant what had happened and the Claimant told him that he did not know. He again asked the Claimant what happened and the Claimant told him that he had been smoking and he had flicked the cigarette on top of the timber. He asked the Claimant to leave and to return the next day and they would go through the procedures.

The Claimant returned on 29th May and he brought the Claimant to the office. He also brought the union representative to the office. He again asked the Claimant what had happened and the Claimant told him. He told the Claimant that he was dismissed. He wrote down everything that occurred at the meeting, what the Claimant said and what he said and the union representative signed the note of the meeting.

It was put to the witness that the Claimant had settled a personal injury case against the Respondent and when he returned to work his duties were changed. The witness explained that it was not only the Claimant's duties that were changed. It was put to him that the Claimant was in the canteen when the fire started and he replied that he would not know as he himself was also in the canteen.

When put to him that the Claimant did not start the fire he answered that the Claimant admitted to him that he started the fire. In answer to further questions he explained that he did not recall giving the Claimant a copy of the report of the meeting, he did not give the Claimant a copy of the grievance procedures.

The Tribunal heard evidence from the MD. He told the Tribunal that they had used the correct procedures (in dismissing the Claimant). He told the Tribunal that the Claimant returned to the workplace on 30th May. He himself had previously given the foreman a draft copy of a letter. The letter was an unsigned draft that he had composed in consultation with the construction Industry Federation (CIF). The foreman had mistakenly given this letter to the Claimant. On 30th May the Claimant showed him the letter and he asked the Claimant for the letter. He grabbed the letter from the Claimant's hands.

During questions from the Tribunal the MD was asked if there were appeals procedures in the company and if the Claimant was told of an appeals procedure. He explained that there were and that the company got instructions from the CIF and as far as the company was concerned they went through procedures. The MD accepted that there was no written contract for the Claimant; they had no signed contract for the Claimant. The MD accepted that there was no appeal.

Claimant's case:

The Tribunal heard evidence from the Claimant (with the aid of an interpreter). He told the Tribunal that after the personal injury case his duties were changed to light duties.

On 27th May the foreman sent him to the rubbish/timber storage area. He was told to separate the metal from the timber. He was not aware of safety procedures. He worked for some time and then he went for a break. When he returned from his break he saw that there was a fire. He did not see how the fire started as it was in progress when he returned from his break and also that anyone could have access to the rubbish/timber storage area. There was no fire brigade at the scene when he arrived so he started to extinguish the fire himself and then the fire brigade arrived.

The foreman arrived and asked him what happened. He told the foreman that he did not know as he was on his tea break. The foreman asked him if the fire might have happened because of a cigarette. He told the foreman that it would not have been possible because the rubbish had been there two years. The Claimant told the Tribunal that the foreman told him to "f*** *ff" and sent him home.

The Claimant was called into the work office on the 28th May. He was handed a letter to the effect that he would have to pay the Respondent €30,000.00. This was €15,000.00 for the timber and €15,000.00, for the fire brigade.

The foreman did not give him a chance to reply. The foreman did not give him a copy of his report. The foreman did not give him a copy of the grievance procedures. The foreman did not advise him that he could be accompanied by someone at the meeting.

The Claimant called back to the workplace on 30th May, as he wanted a copy or photocopies of the written warnings he had previously been given. The MD took the letter that he had in his hand. The MD and he had a verbal altercation and the MD told him that they would call the Gardaí.

The Claimant was asked if he had received any warnings prior and he explained that he did about his conduct. When asked how many warnings he got he replied, "(the foreman) gave me one

warning, he said I cannot make the fire with rubbish, but the problem is there is no space to put rubbish".

The Claimant would deny that he started the fire.

Determination:

It is the unanimous decision of the Tribunal having heard the evidence presented by the parties that no proper system of warnings or interviews was in existence in the company. Nor was there in existence a contract of employment of any description and such attempts as were made by the Respondent to investigate the matter were totally inadequate.

In the circumstances, from the evidence that was produced to us, the Tribunal are of the view that the dismissal was unfair and accordingly award the sum of €16,000.00, as compensation under the Unfair Dismissals Acts, 1977 to 2001.

The claim under the Minimum Notice and Terms Of Employment Acts, 1973 to 2001, succeeds and the Tribunal awards the sum of €3,200.00, as compensation in lieu of notice.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)