

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD909/2007
MN715/2007

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 BL

Members: Mr D. Moore
Dr. A. Clune

heard this claim at Galway on 15th September 2008

Representation:

Claimant(s) : Purdy Legal, Solicitors, New Docks, Lough Atalia, Galway

Respondent(s) : Mr Larry O'Connor, L. O'Connor & Co, Solicitors, 196 Upper Salthill, Galway

The determination of the Tribunal was as follows:-

Respondent's Case:

The Director of the respondent company gave evidence. He had taken over as Director of the company in 1997 but was originally a developer of the golf course.

He explained that the claimant had been dismissed because of a combination of four factors.

The shift started between 6 am and 8 am depending on the amount of daylight. As the clock was a quarter mile from the shed the staff worked in, they were expected to clock in fifteen minutes before they commenced work in order to get changed and be present to commence work on time. The claimant was late on a number of occasions, clocking in minutes after 6 am before getting ready for work and walking to the shed. This was the first factor that lead to his dismissal. The witness explained that staff often worked in teams and if a team member were late for work it would have an adverse affect on the work.

The second factor was due the claimant's attitude towards his work. The witness told the Tribunal that on three separate occasions the claimant told him that he was not "paid to think" when asked his opinion about a work matter. On the third occasion the claimant was put on notice.

The third factor was the claimant's refusal to work outside the shed, when asked, in the rain. The final factor was his lack of interest in the job. The claimant had been a very good worker but as time went on he lost interest. His attitude had changed over a period of two years before he was let go and had been told on a number of occasions that his standard of work had to improve.

On the day of the claimant's dismissal he asked the claimant to hitch a compressor to a tractor and moved it up a slight hill. The compressor was not attached properly and slipped back down the hill, which was very dangerous. He told the claimant that he would hitch the compressor himself and told the claimant that he was dismissed.

The witness explained that there were eleven or twelve staff and had no major problems with them. There was one member of staff that was sometimes late for work but he stayed late in the afternoon to make up the time.

On cross-examination and asked why he had dismissed the claimant, he replied that it was because there had been a history of complaints and again stated the four factors which lead to the claimant's dismissal. The claimant had no written terms and conditions of employment and, at the time, there had been no disciplinary procedures in place.

He explained that another member of management, who had since left, had ran the course day to day until May 2006 but had worked on the course when he could in the past. The witness told the Tribunal that he put the claimant on notice of his employment on April 12th 2007. He refuted that he told the claimant if he "did not like it here, there's the gate". When asked, he said that he had never offered the position of Greenkeeper to the claimant.

The witness's diary was submitted to the Tribunal for their perusal. Eleven notes in the diary over a period of eleven months were read out. These notes included four separate late arrivals of between 6.03 am to 6.06 am and when he was warned over them. It also had a record of when the claimant had been warned of his standard of work and his lack of interest in it. When asked what the phrase "put on notice," meant, he replied that it meant if the claimant did not improve he was out of there.

Claimant's Case:

The claimant gave evidence. He explained that he had a qualification in Greenkeeping and the previous Manager of the golf course had offered him the position of Deputy Greenkeeper in 1999 on a six-week trial. The respondent's first witness had been there at the time.

He had gotten on well with the respondent's first witness and had enjoyed working for the respondent. In 2006 four of the greens had been burned and the respondent's first witness blamed the Head Greenkeeper. One morning while working on the tenth green the respondent's first witness offered him the position of Head Greenkeeper. He told the respondent's first witness that he had some personal commitments at that time and that his friend already had the position. He explained that at the time the Manager was on sick leave. The respondent's first witness gave the orders but overrode the Manager's instructions.

The four factors that lead to his dismissal were put to him. On May 9th 2007 the respondent's first witness had warned him that he was late. Another member of staff was also late that morning and also received a warning. The claimant explained that the staff were not paid for the extra quarter of an hour the respondent's first witness wanted them to arrive early for work. He was not aware of the any notes made in the diary concerning him.

The day the respondent's first witness wanted the claimant to work outside in the rain he had been cleaning a machine that had been used to cut the fairway. The rule was all machinery had to be cleaned

after use. The claimant told the Tribunal that the respondent's first witness made rules and always changed them.

On July 23rd 2007 he arrived for work. It had been a very wet weekend and he was in the shed cleaning two machines. The respondent's first witness and told him to hook up the compressor to the tractor and take it out to where he was working. He hooked it up but did not think it was safe. He knew he had to do what he was told to do. Half way up the hill the compressor got loose and rolled down the hill. He got out of the tractor and put a stone behind the compressor to hold it. The respondent's first witness told him he would tie it himself and that he had "to do everything around here". He told the claimant that he was no good, was only trouble answering him back and was to get out of there and not come back. He asked was he being fired and was told yes.

He said that he felt he was dismissed because he talked back to the respondent's first witness. The claimant told the Tribunal that the respondent's first witness often "blew his top" in the past. On one occasion in 1996 clients had been playing golf on the fifth green but the respondent's first witness waved them on as he was working there. The claimant told him that he could not speak to clients like that. The claimant stated that every time he received a warning he was told where "the gate was".

He gave evidence of loss. He had tried to obtain employment and had done some odd jobs since his dismissal.

On cross-examination he accepted that he had said that he was "not been paid to think" but denied that he had said it during working hours. He agreed that he had been put on notice for arriving late to work, when he was asked to work outside but was in the middle of cleaning a machine and when he had voiced his opinion on the green. He did not recall a warning given to him regarding the sodding. He said that he never let his frustrations get in the way of his work.

He was questioned on the mitigation of his loss. He explained that he was involved in a Community Employment scheme, which had commenced two weeks before the day of the hearing.

Determination:

Having heard the evidence adduced by both parties in the case the Tribunal finds that the respondent had been procedurally unfair in dismissing the claimant. Accordingly the Tribunal awards the claimant the sum of € 17,500 under the Unfair Dismissals Acts, 1977 to 2001.

Loss having been established the Tribunal awards the sum of € 3,618.66, this being six weeks gross pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)