

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD834/2008
MN768/2008

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: Mr. E. Murray

Members: Mr. M. Forde
Mr. J. McDonnell

heard these claims in Clonmel on 5 January 2009

Representation:

Claimant(s) :

Mr. Eoghan Cole BL instructed by
Lavelle Coleman, Solicitors, 20 On Hatch,
Lower Hatch Street, Dublin 2

Respondent(s) :

No legal representation

The determination of the Tribunal was as follows:-

It was agreed between the parties in this case that the claimant was summarily dismissed for dishonesty. The managing director (MD) of the respondent company gave evidence that the claimant was seen removing between 10 and 15 bales of aeroboard from his employer's building site at Deerpark, Golden Road, Cashil, Co. Tipperary on 15 March 2008. He had verified the removal of the aeroboard by visiting the claimant's premises and taking photographs of the bales stacked in his backyard.

He made a complaint to An Garda Siochana and subsequently he was informed that a kango

hammer which was his property had been shown to the Gardai by the claimant at his home.

When the MD established the full facts of the case he called the claimant to the site office where he confronted him about the removal of the aeroboard. He said that the claimant denied any wrongdoing. The MD demanded the return of the company's property and indicated to the claimant that his employment was being terminated. Later that day the claimant returned the kango hammer and two bales of the insulating material. The other bales were never returned.

The claimant in evidence admitted the removal of the bales of insulating material. He had borrowed them for the purposes of creating an elevated platform, which would enable him to remove plaster from the wall of a conservatory in his house. He placed the bales on the ground and covered them with planks and this gave him the elevation that he required in order to carry out the works that he was doing. He never intended to keep the bales and it was always his intention to return them.

After his dismissal the claimant returned two bales and the kango hammer to the respondent's site. He said that the day before he was dismissed he had returned the rest of the bales.

The claimant believed that there was a loose arrangement on the site whereby workers could take equipment from the site from time to time by way of loan if they were doing work in their own premises. Examples of trailers, drills, scaffolding etc were given. It was conceded however that the removal of materials without the consent of the employer would be most unusual.

Determination

There is a direct conflict of evidence between the parties in this case. The Tribunal has carefully listened to the evidence and observed the demeanour of the witnesses during the course of their evidence. The Tribunal is unanimous in finding that it prefers the account of events given by the managing director of the company and is not satisfied that the bales of insulating material which the claimant acknowledges that he removed without the consent of his employer from the building site were ever returned.

In those circumstances the Tribunal is unable to do other than disallow the claim and dismiss the claim under the Unfair Dismissals Acts, 1977 to 2001.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)