

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

3 Employees

CASE NOS.

UD601/08

MN535/08

UD602/08

MN536/08

UD603/08

MN537/08

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: Ms M. Levey BL

Members: Mr W Power
Ms E Brezina

heard this claim at Dublin on 10th November 2008 and 4th February 2009.

Representation:

Claimants: Mr. Ivan Williams, Ivan Williams & Co., Solicitors, 1 Convent Road, Dalkey,
Co. Dublin

Respondent: Mr. Noel McDonald, Seamus Maguire & Co., Solicitors, 10 Main Street,
Blanchardstown, Dublin 15

The determination of the Tribunal was as follows:

Claimants' Case:

The evidence of the first named and third named claimants (C1 and C3) was accepted by the Tribunal to be exactly as that given by the second named claimant (C2).

The second-named claimant (C2) gave evidence. He commenced employment in early January 2002 and his employment ended on 16th April 2008. At 4 pm on Wednesday, 16th April 2008, the owner of the company (OC) arrived on the site where the claimants were working and asked why soil had not been removed. He informed OC that he deemed the area to be unsafe and dangerous. OC became angry, yelled at him and then threw his mobile phone on the ground. Photographs of the soil and structure were subsequently taken by C3 and presented to the Tribunal. C2 suggested that the extra soil could be used to fill in a ditch beside a wall, but this was rejected by OC. C2 disputed ever receiving the order to remove the soil and he only became aware of it when OC arrived onsite on Wednesday 16th April 2008.

At approximately 4.20 pm that day the Site Foreman (SF), who was also a translator, arrived at the site. He said OC was very angry. He told the claimants to call it a day and drove them home. SF told them if they wanted to work the next day they would need to remove the soil. He also said they would have to pay for the removal of the soil, otherwise they should not report for work.

Between 6pm and 7pm that evening SF telephoned them and said they were being dismissed. An hour later the landlord arrived at the accommodation and claimed the rent. During their employment OC had paid their rent and utility bills.

At approximately 9am on Monday, 21st April 2008, SF arrived at their house and asked them would they like to work. They wanted to return to work and handed SF a piece of paper in which they outlined their conditions:

- If they worked they wanted to be paid.
- If an incident occurred on the site who would be responsible?
- They wanted clarity on their rent and accommodation, e.g. who would pay the rent?
- If OC was dissatisfied with their work he should clarify the matter with them.

About an hour later they received a telephone call from SF telling them they were dismissed and that they would receive their P45 forms. They contacted the Trade Union and were advised that if they were dismissed they needed the P45 forms.

Around 4 pm on Monday, 21st April 2008, the foreman called to their accommodation and gave them an envelope, which contained their P45 forms. They then contacted their Trade Union to take up the matter on their behalf. Several days later the Trade Union asked them to return to work. OC agreed to pay them the standard rate of €18.60 per hour, but would not pay for their bills or accommodation. They would also have to pay their own travel expenses. Previously they had been paid €110.00 per day for 8 hours per day. They also worked 15 hours overtime per week. C2 disputed that OC paid fully for their employment permits, but rather they had part-paid for some of them.

C2 gave evidence of loss.

Respondent's Case:

The owner of the company (OC) gave evidence that he brought the claimants from China to work for him in 2002. While they were not qualified plasterers he had other jobs to be done and he was happy to train them in. OC paid for their employment permits, rent, bills, pension scheme, union fees and provided tools. The claimants were also transported to and from work.

On Wednesday, 16th April 2008, OC had arranged for a truck with a grabber to remove soil from the site that the claimants were working on. Half of the soil to be removed was inside the structure being renovated and this had to be moved outside for collection. OC had told SF to instruct the claimants to move the soil. When OC arrived on Wednesday afternoon the truck had been to the site, but had only taken half the soil, as the soil inside had not been moved out. OC was annoyed by the situation, but had not asked the claimants to leave. OC rejected C2's suggestion that the extra soil be used for infill, as there was too much of it.

SF told him that the claimants refused to come to work the following day. OC decided to let them cool off for the weekend, he was unaware of any instructions given by SF to the claimants. SF gave evidence that the claimants had mentioned the four points to him on Thursday, but he did not

receive anything in writing until Monday, which was when he gave it to OC. The claimants again refused to come to work on Monday, 21st April 2008, when SF called for them. OC was informed by SF that they wanted their P45s, which he gave to them immediately. OC contended that if the landlord contacted the tenants it must have been during the week of the 21st April 2008 and not before.

At a meeting later that week, with the claimants and their trade union, OC offered them their jobs back at the appropriate construction rate, but with none of the additional benefits, outlined above. The claimants refused to discuss this.

SF gave evidence that the claimants only raised health and safety concerns with him about a wall after being given out to by OC. SF told OC about this the next day. When giving evidence, OC was adamant that the structure was safe and had been secured by a reputable demolition company. The demolition company had instructed OC to leave the wall in question there for safety purposes and it was pinned to a wall behind it. OC contended that the claimants had worked happily within the structure with a kango hammer for the few days prior to this incident.

SF stated that the instruction to clear the soil had come from OC on Tuesday, 15th April 2008. The claimants helped SF unload some timber and then he gave them a lift part of the way home. SF denied telling the claimants to go home or that they could return to work as soon as they paid for the soil removal. SF disputed called the claimants' landlord, as he did not know who the landlord was.

Determination:

Having considered all of the evidence the Tribunal finds that the claimants had no previous difficulties with the employer. The employer provided them with their accommodation, tools and certain bills were paid for them. They had made no complaints previously regarding the safety of buildings in which they worked. Regarding the building in question, they had moved the soil into that building without complaint. The health and safety issue only arose after the failure to carry out the instruction to remove the soil from inside the building, so that the truck could collect it. The suggestion, by the claimants, that the soil be used for the foundations indicates to the Tribunal that they had in fact no health and safety issue, as they would be the people moving the soil. In addition to that, a reputable contractor had demolished the building, and therefore, when considered together, the Tribunal is satisfied that there was no health and safety issue at all. Accordingly, the claims under the Unfair Dismissals Acts, 1977 To 2001, and the Minimum Notice And Terms Of Employment Acts, 1973 To 2001, fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)