

## EMPLOYMENT APPEALS TRIBUNAL

### CLAIM(S) OF:

Employee

- *claimant*

### CASE NO.

UD1022/2008

against

Employer

- *respondent*

under

## UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr M. Murphy  
Ms. K. Warnock

heard this claim at Dundalk on 19th February 2009

### Representation:

Claimant(s) XXXX

Respondent(s) : Adrian Ledwith, Solicitor, 9 Crowe Street, Dundalk, Co. Louth

The determination of the Tribunal was as follows:-

### Claimant's Case:

The claimant gave evidence. He commenced employment with the respondent in August 2005 replacing PVC guttering and some carpentry work. He did not have a written contract of employment. All staff met in the respondent's yard in the morning and then they all set off together.

On May 7<sup>th</sup> 2008 he was working in a remote area of the Cooley Mountains. The respondent left to get some supplies and returned some time later. Around 1.50 pm he was working up a ladder while listening to his ipod. He spotted the respondent, having descended the ladder, and got into a heated argument about his ipod. The respondent told him to turn his f\*\*\*\*\*g ipod off as he could not hear him calling him. The claimant cursed back at him. The respondent told him to put down his nail bag and f\*\*k off. He went around to the front of the house and asked his colleague for a lift back to Dundalk but he just shrugged. He walked 2 hours before he could get a mobile signal and ring his mother to pick him up.

He gave evidence of loss. He had completed one weeks work since his dismissal and had not applied for any work since but would look for work in the future.

On cross-examination he said he was listening to his ipod the whole time he had been working on the guttering on the day on question. The respondent was about 15 metres away from him when he spotted him. He had not had his lunch break that day, as they had to rush to get the job finished that day. He agreed that they had exchanged words in the past but not like that and never been told to clear off before.

When asked he said that he had loved his job with the respondent. When he left he had asked a guy he met on the road, who knew the respondent, for directions and told him what had happened. He did not contact the respondent, his colleague collected his P45. He agreed that strong language was part of the norm in the job.

On re-direction he stated that it took some time to get his P45. When asked by the Tribunal he stated his wages were paid part cheque and part cash in hand.

### **Respondent's Case:**

The owner of the respondent company gave evidence. On May 7<sup>th</sup> 2008 he arrived at the site but had to leave to get supplies. On his return to the site a neighbour came over to speak to him. He noticed the claimant up the ladder listening to his ipod. He shouted at the claimant but was not heard. The claimant came down the ladder. He told the claimant not to be listening to his ipod while working and had spoken to him before about his ipod. The claimant cursed at him and walked off. He said that he had not told him to put his nail gun down and clear off. He had not dismissed him or told him to leave. He said that he had expected him to cool off and come back.

They had had arguments in the past; the claimant had gone home and would text later to see if he could come back to work. It was never a problem.

On cross-examination he said that the claimant used to listen to his ipod on his breaks. He did not have a grievance or disciplinary procedure in relation to the use of the ipod. The claimant was told before not to bring his ipod to work, he could have got injured. He had also told the claimant of the health and safety aspect of wearing his ipod while working. He stated that he had had problems with the claimant. His work was not up to scratch and he was always late to the yard. He said that he had called the claimant 3 to 4 times on the day in question but the claimant could not hear him. When asked why he had let the claimant storm off without a lift in such a remote area, he replied that he had been unaware he had left the premises.

When asked by the Tribunal he said that the claimant had walked off in the past. There was no contract of employment, grievance or disciplinary procedure.

The neighbour who had spoken to the respondent on the day in question gave evidence. He was present when the dispute took place between the respondent and the claimant. He spoke to the respondent concerning a problem with his guttering. The respondent went to get a ladder and some screws. The respondent shouted up at the claimant who could not hear him. This went on for about 10 minutes. The claimant came down the ladder and an argument ensued about the ipod. The claimant stormed off. When asked, he said the respondent had not dismissed the claimant nor told him to take off his nail bag.

On cross-examination he said that he had seen the claimant walk to the front of the house.

The person the claimant asked directions from gave evidence. He said he was working near the respondent's site and met the claimant on the road. The claimant told him that he had had an argument with the respondent, was fed up and was going home. He gave the claimant directions.

**Determination:**

The Tribunal prefers the evidence of the respondent in this case. The witness had heard the conversation between the claimant and the respondent and argued that the respondent did not tell the claimant to leave. This is confirmed by the conversation the claimant had with the respondent's third witness in which the claimant did not tell this witness that he had been dismissed when it was reasonable to accept that such a declaration could have been made.

The evidence in this case showed that the respondent had not issued the claimant a contract of employment as per the Terms of Employment (Information) Act, 1994 and had not implemented a grievance handling procedure or disciplinary procedure as required under the Industrial Relations Acts, 1990 and the Tribunal take due note of these facts in its deliberations.

In the circumstances the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)