

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee - claimant UD1334/2008

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. C. McHugh
Mr. S. O'Donnell

heard this claim at Dublin on 30th March 2008.

Representation:

Claimant: Mr. Neil Vaughan Buckley, B.L. instructed by
McAlinden & Gallagher, Main Street, Ashbourne, Co. Meath

Respondent: Mr. Christopher Horrigan, Blake Horrigan, Solicitors, McKeever
House, 4/5 Ushers Court, Ushers Quay, Dublin 8.

Dismissal as a fact was in dispute.

The determination of the Tribunal was as follows:

Claimant's Case:

The claimant gave evidence. He commenced employment on 2nd September 2002 as a Bulldozer Driver. He worked on a landfill site in Ardcath. He had a good working relationship with his employer. There had never been any altercations between him and the respondent. His conduct was never challenged. He never had any feelings of hostility towards his employer.

On 4th March 2008 he received a telephone call from his employer asking him if he could work late. He agreed to do so. His normal hours of work were 8 a.m. to 5 p.m.

On 6th March 2008 his employer arrived on the site at approximately 11 o'clock. He

told the claimant that he wished to speak to him. A heated argument ensued. Bad language was spoken by both parties. The respondent enquired why he did not work until 7 pm on 4th March 2008. The respondent accused the claimant of having done nothing all winter and the latter then retorted "sack me".

The claimant then removed some items from the bulldozer, left the site and went home. He never spoke to the respondent after that. He received his P45 and outstanding monies owed to him in the post about a week later. He secured work for a short period around Christmas 2008 and has not worked since then. He contended the best ways of securing work was word of mouth and calling into sites and he also mentioned to his friends that he was available for work.

Under cross-examination the claimant contended that he managed the site. No other employees worked there. This function had been delegated to him by the respondent.

While he agreed to work late on 4th March 2008 no finishing time had been discussed. He was unaware that after he left two trucks got stuck on the site. The claimant could not recall a truck being damaged on 6th March 2008. He never received any calls from the respondent after that date. He did not feel that his reaction to the incident on 6th March 2008 was over the top.

Respondent's Case:

The respondent gave evidence. He owned seven trucks, one articulated truck and one bulldozer. The trucks had boxes attached to them. The claimant managed a site for him and was also a key holder. His job entailed levelling out soil and keeping records.

On 4th March 2008 the respondent needed to keep the site where the claimant worked open later than normal. Another site was being excavated in Drogheda and they were under a tight schedule to transport soil to the landfill. He rang the claimant at approximately 4.45 pm that evening and enquired if he could work late. The claimant said ok. He liaised with those working on the Drogheda site. Everyone was fine about working later. There was a distance of between 6 and 7 miles from Drogheda to the site where the claimant worked.

That evening at approximately 6.20 pm he received a telephone call from a truck driver who was stuck on the site. He enquired from the truck driver if the claimant was there. He was told that he had already left the site. He asked another driver to help out. Some time later another truck got stuck. It was not often that he asked the claimant to work late. He was very annoyed.

On 6th March 2008 he rang a fitter to do a job for him. The fitter said he was fixing a truck that the claimant had damaged. The side had been damaged. The respondent was most annoyed as this was only a new truck. He arrived on the site at approximately 11 o'clock. The claimant got out of his bulldozer. The respondent told him he had issues to discuss. The claimant said he had not been told what time he was to work till on the evening of 4th March 2008. The respondent's understanding was that because the claimant constantly had contact with the drivers he should have enquired as to what time they expected to finish that evening. The claimant did not like the respondent arguing with him. Bad language was used. The claimant

said that he did not have to listen to this and said, "I'm out of here". The respondent was very annoyed and felt the claimant did not want to be picked up on things when they went wrong. He thought the claimant would cool off and that he would be back the next day.

The following Monday, he told the secretary in the office to contact the claimant. She made several calls to him but to no avail. Because he had received no contact from the claimant the following Thursday, he instructed that his P45 and monies owing be posted to him.

Under cross-examination the respondent contended that he had no issue with the claimant's conduct and competence up until the 6th March 2008. He was a fair performing employee and had a good working relationship with him. He had not furnished the claimant with a contract of employment or disciplinary or grievance procedures.

He trained his employees on how to use the trucks and how the bulldozer operated to push the trucks out of the marshy land. He regarded this as a simple operation. When he learned of the damage to the truck on 6th March 2008, as an employer his procedure was to go to the site and talk to the claimant. He contended that the claimant was not prepared to listen to him when he wanted to discuss the claimant's leaving the site early on 4th March and also the damage to the truck on 6th March 2008. As he ran the business he spent most of his time out on the road. He instructed his secretary to contact the claimant the following week. She was unable to speak to the claimant as his phone appeared to be switched off. It did not occur to him to write to the claimant during that time.

The respondent told the Tribunal that there were no hard and fast rules and that claimant would never work late without his permission. The claimant has since been replaced. The respondent had not seen the damaged truck on 6th March 2008 as it had been repaired before he reached the site. The repair work cost €300.00.

The secretary of the company gave evidence. She was responsible for the day to day running of the office. She had been made aware of the incidents in question. The respondent asked her to ring the claimant some days after he walked off the site. She rang several times between Monday 10th and 12th March 2008 from the office phone and from her own mobile. She received no reply. The voice mail on the claimant's mobile phone was not activated so she could not leave a message. On Thursday, 13th March 2008 she was asked to prepare the claimant's P45 and monies owing to him.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. Clearly, there was an altercation between the respondent and the claimant on the morning of 6th March 2008, which culminated in the claimant taking his belongings and leaving the site. The Tribunal find that this action resulted from the conversation between the parties and prefer the evidence of the claimant on this point. This was confirmed by the evidence of the respondent, which showed that when the secretary was unable to contact the claimant by telephone, after several attempts, the respondent failed to

formally write to the claimant to enquire if he was returning to work. The Tribunal further finds that there might have been a resolution of the issues between the claimant and the respondent had there been a grievance procedure in compliance with the Legislation within the employment. The Tribunal has noted the fact that the claimant did not have a contract of employment as required by law and that no grievance procedures existed within the company either. The efforts by the claimant to secure further employment and so to mitigate his loss were half hearted at best.

The Tribunal determines that the claimant was unfairly dismissed and awards him €6,000.00 under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)