

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
Employee - claimant

CASE NO.

UD1019/2008  
MN947/2008

Against

Employer - respondent

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: Mr M. O'Connell B.L.

Members: Mr F. Cunneen  
Mr. S. O'Donnell

heard this claim at Dublin on 6th January 2009  
and 25th March 2009

Representation:

---

Claimant(s) : Mr. Jadell Naidoo BL instructed by Chris Ryan & Co., Solicitors, 18 North King Street, Dublin 7

Respondent(s) : James A. Connolly & Co., Solicitors, 13 St. Andrew St, Dublin 2.

### **Preliminary Issue**

Dismissal was in dispute in this case and as such the claimant's case was the first to be heard.

### **Claimant's Case**

The claimant gave direct evidence that he commenced working for the respondent company in July 2004 and was employed as a storeroom supervisor. He was not provided with a written contract of employment until February 2008. On Wednesday the 21 May 2008 he received a phone call from his mother in Poland informing him that his father was seriously ill and only had one or two weeks left to live. He immediately booked a flight home departing on Sunday 25 May 2008. He reported

for work the next day but forgot to inform his employer about his plans. On Friday the 23 May 2008 at 8.30 a.m. he spoke to his manager, told him about his father's illness and requested three days leave. His manager replied that he would speak with him again at lunchtime after speaking with a senior manager. The claimant sought to speak with his manager at lunchtime but could not locate him. He decided to go home at that stage as he did not want to be there and it was quiet.

His employer telephoned him later that day and asked him to return to work. He did so and was told that if he did not report for work on Monday the 26 May 2008 his job would no longer be available to him. He felt that he was left without any option and requested his P45 and a reference from the company. He returned to Poland and his father died on the 5 June 2008. He was unemployed for a total of 20 weeks after that.

Under cross examination he agreed that earlier in May 2008 he had received a card from his manager but did not know what it was for and threw it in a bin. He did not know why his colleagues believed that his mother had died in early May 2008

### **Respondent's Case**

The first witness gave evidence that he is a director of the respondent company. On Friday the 23 May 2008 the claimant approached him requesting a half day, plus leave for all of the following week to return to Poland as there was an issue concerning his mother's house. No mention was made of his father's illness. After consulting the claimant's manager it was decided to refuse the request as the claimant had already used all of his holiday allocation. The claimant was informed of this position and was told by the witness to report for work on Monday 26 May 2008 or his job would no longer be available to him. He did not do so.

The witness gave further evidence that he was aware that the claimant's mother had been ill previously in 2008 and had returned to Poland on a few occasions. He confirmed that the claimant had previously been allowed to use his mobile phone while operating a forklift to enable his ill mother to contact him. Other employees were not permitted to use mobile phones while operating a forklift. In early May 2008 the claimant was very upset after receiving a phone call and informed a colleague that his mother had died. He had only taken one day off to attend the funeral and the witness gave him a mass card on that occasion. When asked on that occasion why he had only required one days leave, the claimant stated that he did not have a good relationship with his stepfather. The witness had never heard the claimant refer to his father, only his stepfather.

The next witness gave evidence that worked for the past 13 years for the respondent company. He was employed in the office and in stores. On the 8 May 2008 he was working with the claimant and noticed that he had become very upset. The claimant told him that his mother had just died. The claimant took the remainder of that day off but returned to work the next day and said it was easier to come to work rather than staying at home. Under cross examination the witness confirmed that he had no dealings with the claimant on the 23 May 2008.

The next witness gave evidence that he worked for the respondent company as a stores manager. On the 8 May 2008 he was informed by the previous witness that the claimant's mother had died. The witness referred the claimant to the owner of the company. The claimant returned to Poland the following Saturday and reported back for work on the following Tuesday. On the 23 May 2008 the witness did not speak with the claimant but discussed his request for leave with the owner. Under cross examination the witness confirmed that business had reduced by a few percent in May 2008

and confirmed that the claimant has not been replaced in his job.

**Determination**

Conflicting evidence was given in relation to the circumstances leading to the termination of the claimant's employment. However it is common case that the claimant was aware of the implications of his decision not to return to work on Monday the 26 May 2008. We are satisfied that a dismissal did not take place, therefore the claim under the Unfair Dismissals Acts 1977 to 2001 fails. As there was no dismissal the claim under the Minimum Notice and Terms of Employment Acts 1973 to 2001 must also fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

