

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD1090/2008,MN1000/2008

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly B L

Members: Mr C. McHugh
Mr A. Butler

heard this claim at Wicklow on 13th May 2009

Representation:

Claimant : Paul W. Keogh & Co, Solicitors, 103 Lower Baggot Street, Dublin 2

Respondent : Mr Patrick Coen, Coen & Associates, 10 Shrewsbury Lawn, Cabinteely, Dublin 18

The determination of the Tribunal was as follows:

Preliminary Issue

Since it was unclear from the claimant's T1-A form and the respondent's response to it as to the status of the working relationship between them the Tribunal needed to satisfy itself that the claimant came under the protection of the Unfair Dismissals Acts to allow a substantive hearing of this case.

Having heard brief evidence on this issue the Tribunal found it had jurisdiction to hear this constructive dismissal case.

Claimant's Case

Prior to starting work with the respondent in March 2006 the claimant operated his own separate business. That business proved unsuccessful and as a consequence he accepted the respondent's invitation to undertake work for it. No contract of employment or terms and conditions of employment issued in this case. The claimant was never assigned specific roles within the respondent and spent "reasonable" amounts of time in the workshop assembling jump starters. That role changed in early 2007 when his input into the respondent expanded into other more specialised areas. His initial remuneration consisted of payments directly presented to him. He had not furnished the respondent with a P45.

The claimant's income from his work at the respondent's was based on a net to gross basis from the commencement of his employment and continued for some time thereafter. That meant in effect a gross salary was calculated on his net income. In evidence the claimant referred to the way his tax credits and P60s became for him a contentious issue and a source of annoyance. He suggested that the way the respondent operated those credits disadvantaged him. He was "alarmed and fuming" at the changes he identified in the issuing of an amended P60 for the tax year 2006.

The respondent's financial year ended on 31 March and it issued this amended P60 in July 2007.

The witness also referred to outstanding holiday entitlements that he claimed the respondent did not grant him. He also commented on a related company of the respondent. That company neither traded nor had he done any work on for it.

Due to his continuing annoyance concerning his remuneration arrangements and the way the respondent treated him in relation to his tax and income payments agreed between them in July 2007 the claimant resigned his employment in March 2008. He no longer had trust in the respondent at the way it treated him. He submitted a letter of resignation dated 20 March to the principal of the company. That letter stated his appreciation to the respondent for having worked with them. He also forwarded a second more detailed letter dated that day to the principal outlining his case on holiday entitlements and payroll issues.

Respondent's Case

The principal was "totally shocked" at the claimant's resignation. This reaction stemmed from the fact that the claimant had never aired his grievance about his tax and income arrangements prior to that announcement. He was not aware of the claimant's reason for his resignation at the time it was given. There was no history of disquiet between the claimant and the respondent. The claimant's verbal notice to resign was followed by his written confirmation. The witness enjoyed a good working relationship with the claimant saying he was easy to work with. He added that the claimant worked with him rather than for him. It was a relationship of equals and he never treated the claimant as an employee.

The claimant accepted the remuneration arrangement entered into from March 2006. The witness confirmed this was on a net to gross basis. While the claimant did comment to him about this arrangement the witness referred the claimant to the company's accountant in matters concerning his remuneration.

An external accountant who attended to the respondent's financial transactions understood that the claimant was taken on by the company on a short-term "dig out" basis. It was the practice at the time by that company to operate a net to gross payment system. The witness insisted that neither

cash payments nor any irregular payments applied in this case. In 2007 the witness contacted Revenue and received information on the claimant's tax credits. Those increased credits resulted in an adjustment in the claimant's income that included a modest refund to him. However the claimant accused him of interfering with his income arrangements and of contacting Revenue without his permission. The witness said he had contacted Revenue, as he had not received any tax credits from them in relation to the claimant.

It appeared the claimant had not been registered as an employee throughout 2006 and therefore Revenue did not treat him as a PAYE worker. The accountant attempted to rectify and regularise that situation. The witness agreed that a net to gross system was not ideal but the claimant and respondent had agreed to that arrangement.

Determination

The test is a two tiered and/or test. Firstly, the claimant must show that there was a breach of his contractual terms which prevented him carrying out his contractual duties. Secondly, if the Tribunal are satisfied that in all circumstances the claimant's decision to leave his employment was reasonable they can find for him.

Apart from the remuneration issues in this case there was an unusual working relationship between the principal of the respondent and the claimant. The respondent appeared to regard the claimant as a business partner and not as an employee. The claimant appeared comfortable in a loose arrangement with the respondent. The method of remuneration was open to conflict and ultimately became a source of conflict.

There was no concrete evidence from the claimant that prior to his resignation he effectively brought his grievances to the respondent. On the other hand the respondent never furnished the claimant with a grievance procedure. That does not outweigh the claimant's duty to have attempted all reasonable means within the company to resolve his grievances there. He did not do this instead he resigned and then aired his grievances. That did not allow the respondent the opportunity to address those grievances while the claimant remained on as an employee.

The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

