

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.

UD1530/2008

- *claimant*

against
Employer

- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr J. Browne
Ms K. Garvey

heard this claim at Wexford on 16th July 2009

Representation:

Claimant: Mr Patrick M McCarthy, Patrick M McCarthy & Co, Solicitors,
"Glena Ville", Glena Terrace, Spawell Road, Wexford

Respondent: Mr Tom Finn, Finn & Doyle, Solicitors,
7 Lower Georges Street, Wexford

The determination of the Tribunal was as follows:-

Claimant's case:

The claimant gave evidence that he never received a contract of employment, nor did he receive payslips unless he asked for them. The relationship with his employer was ok before 4 November 2008, and he had never received a written or verbal warning.

On 4 November 2008 he was called in by SR and asked about a car loan-form which had not been filled in. He said that he had left it to HB to organise, and that any member of staff could have filled it in. SR then said to him to "get your stuff and get on out" and pointed to the door. He denied that he had said to SR "do you want me to leave". The claimant then took some of his belongings and told HB that he was fired and didn't work there anymore. SR seemed upset and angry. When he got

home he rang HB to ask about the car loan form. She said that SR had informed her that the claimant walked out of the job, but he said why would he do such a thing with the commitments he had. He was in no doubt that he had been sacked.

He went to the welfare office in Enniscorthy the next day and was informed that he needed documents from the company saying that his employment had ended in order to claim assistance. So he e-mailed the company on 5 November 2008 asking for these documents and did receive them.

He said that he did get one phone call from SR, but didn't want to be confrontational, so he hung up. He did try to contact him by e-mail.

Respondent's case:

The proprietor (SR) gave evidence that all staff were given contracts of employment including the claimant. About two months before the claimant left, a meeting was held where the claimant took responsibility for the filling in of all car loan-forms. Several meetings were held before 4 November 2008 where various problems in the garage were discussed. At one of these meetings the claimant had said to him "if you want me to go, just say it". He said that they were surprised he would say such a thing, that they didn't want him to go.

When he called the claimant in to his office on 4 November 2008 to discuss his failure to fill in the car loan-form and other issues, the claimant was in bad form. He said that if that was his attitude, there was no point in him working there. The reason he said this was because he expected that the claimant would change his attitude, but he just walked out. It was never his intention to dismiss the claimant, he couldn't fire someone that way, he simply wanted to ensure that these incidents would not happen again.

He tried to phone the claimant several times after this, but he just hung up when he called. His job was still available to him after 4 November 2008, but he felt that the claimant did not want to work there any longer. He had a good relationship with him before these events. When he was asked in cross-examination about the differences between his statement and the letter he subsequently wrote to the claimant, he said that he could not remember exactly what he had said.

An employee (HB) gave evidence that she heard the claimant state at one meeting that he would take on the responsibility for the filling in of the car loan-forms. After his meeting with SR on 4 November 2008, the claimant took his belongings and told her that he didn't work there anymore. Several meetings were held with staff about problems in the garage, but the claimant was never targeted or singled out for blame. She had heard the claimant say to SR "if you want me to go, just say it" on a few occasions.

Determination:

The Tribunal takes the view that it is reasonable to interpret SR's words as a dismissal. However the claimant contributed substantially to the dismissal as shown by his over-sensitivity on previous occasions by saying 'if you want me to go, I'll leave', and by his failure to query his employer if he had been actually dismissed. This is a substantial contribution to which we must have regard in awarding compensation.

Both parties ruled out re-engagement and re-instatement as remedies. Therefore the Tribunal awards the claimant the sum of €5000.00 under the Unfair Dismissals Acts, 1977 to 2007, being just and equitable having regard to all the circumstances.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)