

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

- *claimant*

CASE NO.

UD22/2009

against

Employer

- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal

(Division of Tribunal)

Chairman: Mr L. S. Ó Catháin

Members: Mr. B. O'Carroll
Dr. A. Clune

heard this claim at Limerick on 28th July 2009

Representation:

Claimant: Mr. Gerard Reidy, Wallace Reidy & Co., Solicitors, 24 Glentworth Street,
Limerick

Respondent: Mr Gary Kingston, Kingston & Co, Solicitors, Lower Gate Square, Cashel,
Co. Tipperary

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant commenced work with the respondent as a Blind Cutter. The claimant did not have a Contract of Employment or access to Disciplinary and Grievance Procedures. On the evening of the 4th of November there was a dozen blinds left on the table unfinished. The blinds had not been sewn yet so the claimant could not complete the job. The following morning on returning from his tea break, the respondent called the claimant and another staff member to a storeroom. The respondent said that there was blinds left unfinished the evening before and that on future they should stay and finish the work. The claimant responded saying the blinds had not been sewn yet so there was nothing he could do with them. The respondent started swearing at the claimant so he left the room. The respondent followed him and proceeded to verbally abuse him accusing the claimant of being late and physically pushing the claimant with his stomach. The claimant informed the respondent that he had been on time and the blinds were completed and he walked away. The respondent followed him and asked him to leave the premises, the claimant continued working. The respondent asked him to leave the premises again and the claimant asked another member of staff to witness the respondent asking him to leave. The respondent asked him to leave several more times. The main witness to the events declined to appear before the Tribunal.

The claimant went to the Social Welfare office and was told he would need his P45 to make a

claim. The claimant phoned the employer and requested his P45 from a member of the administration staff. The Administrator said he had not been dismissed and asked him to come into the premises and discuss the situation. The administrator said she would organise the meeting but never got back to the claimant. On the 6th of November the respondent sent the claimant a letter suggesting he come back to work under new Terms & Conditions pertaining to disciplinary procedures or formally resign. The claimant did not feel he could return to work after the physical and verbal abuse suffered. The claimant's solicitor sent a letter asking could the claimant return to work but this letter was only to clarify whether the claimant could be issued with his P45.

Respondent's Case

An order for blinds came in late and was made a priority. The claimant was not informed that the order was urgent but it is understood that blinds are never left on the table in the evening unfinished. At the end of the day the blinds were still unfinished. The blinds could have been sewn and completed that evening if the claimant had not left early.

The respondent called the claimant to the office to talk about the unfinished blinds, early leaving the previous evening and his late arrival that morning. The claimant started shouting and swearing at the respondent and said he was leaving and packed his bag. The respondent told him to leave if that was his intention. The claimant moved around the premises and followed the respondent shouting abuse. At that point the respondent was left with no alternative but to try and get the claimant to leave the premises, as he was being abusive and disruptive. The respondent disputes the claimant's accusations of verbal and physical abuse. The respondent never dismissed the claimant so wrote to him reprimanding him for his behaviour and requesting his decision regarding his future with the respondent. The respondent would consider the claimant as volatile but good at his job.

Determination

The Tribunal are not satisfied with the supporting evidence supplied by both the claimant and the respondent. There was no Contract of Employment or Disciplinary and Grievance procedures in place.

The claim under the Unfair Dismissals Acts, 1977 to 2007 was one of constructive dismissal, accordingly it fell to the claimant to make his case. The Tribunal finds that the claimant did not reach the required threshold to establish Constructive Dismissal therefore the claim Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)