

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

MN1318/2008
UD1386/2008

against

Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr. L. Tobin
Mr G. Lamon

heard this claim at Wicklow on 3rd June 2009

Representation:

Claimant :

In person

Respondent :

Mr Owen Kenny B.L., instructed by Ms Clíodhna Guy, SOR Mullaney Walsh,
Solicitors, 74 Pembroke Road, Dublin 4

The determination of the Tribunal was as follows:-

The fact of dismissal was in dispute in this case

The respondent manufactures plastic doors and has seven different production areas.

Claimant's case:

The claimant in his evidence told the Tribunal that he commenced his employment on 21st June 2004 on the second of the production areas, fitting. In this area hinges, locks and other devices were installed on the door. This job needed basic skills i.e. using measuring tape and some hand tools. In

September of that year he asked for a career break and returned to work on 11th February 2005. From that date to the 5th April 2005 he worked on the seventh area of production, CNC. This is the most advanced area where special skills and knowledge are required. In this area he worked on CNC Masterwood 330 (old machine in the factory). CNC is a Computer Numerical Controlled machine which had many different types of cutting operations.

On the Masterwood 330 the claimant worked under the supervision of TW who had left the company before the new machine was installed in the factory. He had never been trained on the Masterwood 330 machine by AK as the company had stated. For a period of eight weeks he worked as an apprentice on the old CNC machine under the supervision of TW. The company had stated that he had over two years on the old CNC machine which was misleading.

His duties on the Masterwood 330 machine were:

1. Setting up the door blade on the machine
2. Choosing right programme according to the production card (all programmes were pre-installed in the machine memory)
3. Execution of chosen programme

Working on the Masterwood 330 required only basic knowledge of operation including how to start-stop the machine and clean it after work. But bearing in mind that machine is big in size (about 5m long and 3m wide) and has massive moving parts with cutting blades and routing bits, knowledge of safety was definitely required and was never done for the claimant by any person in the factory. The respondent had no training records as is required by the company's Safety Statement.

In June 2005 he returned to the second area of production: fitting and worked there until the end of 2006. From 2007 to February 2008 he worked mainly in two different areas i.e. fitting and laminating the third area of production and he also did some days in other departments, depending on company needs, (excluding CNC).

At the end of February 2008 while working on laminating he was asked by one of the employees AK, to give him a hand on the new CNC machine. He said he had everything sorted with the manager KB and he could leave the laminating department. They worked together for a period of time and the working process was organised by AK and the claimant worked as an apprentice. The claimant's duties were the same as when he worked on the old Masterwood 330 machine and AK dealt with the more difficult duties which required specified knowledge of the machine and software. Some of these were as follows:

1. Writing and optimisation of CNC programmes, including CAM and CAD software, G and M codes, regulating speeds and feeds.
2. Changing the tools and setting tools length and offset, selecting and defining the tool path
3. Tool changer moving part fixing and optimisation (most dangerous operation had to be carried out behind the machine, where there were no safety mats and the machine had to be switched on to make operator to be able to manually control automatic tool changer frame

Sometimes AK was moved to different departments and this was happening quite often as he was one of the most experienced workers in the factory. During this time the claimant had to carry out

some of his duties and he was also asked by the manager to train another employee, U. In May and June 2008 he was left on his own dealing with all duties including Preventative Maintenance of the Project 5 machine and training another employee without having any concept of electronic machine engineering. At this stage he submitted a grievance to the factory foreman, Mr H and he immediately forwarded it to the technical director, Mr B.

At this point the claimant showed the Tribunal a video of the old and new machine.

Mr B invited the claimant to the office and asked his reasons for wanting to move back to a position in any other area. The claimant explained that there were two CNC machines in the factory and only one trained operator on the floor, AK (Second Grade operator). The claimant also explained that he did not have the skills and knowledge to operate Project 5 machine on his own and keep production capacity to a maximum. Mr B stated that there were no other positions for the claimant other than Project 5 and that he, the claimant was fully trained for the position and he had to carry out all the duties. The claimant tried to argue logically within two days and kept going working on laminating without any attempts to strike. Mr B decided to stop the machine working and not to let the operator AK to work on it. The claimant believed he did this to increase the pressure on him saying he was disruptive for the production. Mr B. invited the claimant to the office on many occasions and always spoke to him in an aggressive and threatening manner. Mr B also tried to mislead the situation in relation to CNC training and the claimant referred to letters from Mr B, copies of which were presented to the Tribunal. Having sought legal advice the claimant again asked Mr B to return him to his previous position or give him the proper training. The response from Mr B was that he was trained and they had no other position for him other than CNC. Copies of the relevant letters were given to the Tribunal.

It was very difficult for the claimant to work alone on Project 5 without the experience of his colleague AK but he had to provide for his family. The claimant was on holidays from 25th July to 12th August 2008. He knew that AK was going on holidays also which meant he would not be in the factory if the claimant needed advice in relation to the CNC machine. The claimant resigned on 13th August 2008 and decided to take a case for constructive dismissal. He informed his manager verbally and sent a letter to the technical director, Mr B. In November 2008 he sent a letter to the managing director, Mr O'K together with copies of his claim to the Tribunal.

The claimant had only three months experience of operating a similar machine and without getting training to the level needed to work and train others safely, he was not able to perform the number of operations required and he informed the respondent immediately. When requested the respondent refused to return him to his previous position. He had no problem working in any of the other six production areas. The respondent ignored the problem with training and two CNC operators who had much more experience than the claimant, left the company. He never told the company that the issue was resolved and he did not apologise for anything because no serious incidents occurred. The respondent acted irresponsibly and carelessly. The claimant had used all available options to resolve the matter and as there was no solution he had no option but to resign. He secured alternative employment in September 2008 on a lower salary.

In cross-examination witness was asked why he assumed he would be left on his own when AK went on holidays and witness stated that there was no one else there to help him. Counsel for the respondent stated that DT had received training in Scotland and that this machine was safer than the previous one. The claimant stated that when you opened the gate it normally shut down the machine. The claimant acknowledged that his role was not to work behind the machine but in front of it. The claimant did not report this to the respondent. The claimant was also referred to the

Terms and Condition of Employment and the respondent expected him to be flexible.

Determination:

Firstly, the Tribunal compliments the claimant on the way he prepared his case and presented his evidence to the Tribunal.

The respondent made an application for a direction stating that the claimant had not reached the onerous burden of proof. They stated that there was no evidence adduced in relation to a breach of the claimant's contract. Secondly they stated that he failed the reasonableness test. Had the claimant made enquiries as to what was going to happen when his co-worker was on holiday his fears would have been put to rest. The claimant left his employment based on a false assumption. The Tribunal find that the claimant did not adduce any evidence at all in relation to his contract of employment and therefore he could not and did not satisfy the burden placed on him in that regard. Furthermore, the Tribunal find that the claimant's decision to leave his employment was based on a false assumption that he would be left on his own to operate the machine when his co-worker was on holidays. He made no enquiry from any member of staff in relation to his issue prior to making his decision to leave. Had he made an enquiry he would have learned that a replacement to cover his co-workers annual leave had been arranged. The Tribunal finds that in all the circumstances the claimant's decision to leave was an unreasonable one.

Based on the evidence adduced by the claimant and his failure to reach the legal burden required his claim for constructive dismissal must fail. The claim under the Unfair Dismissals Acts, 1977 to 2007 is dismissed. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 is also dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

