

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD483/2009, RP506/2009
MN506/2009

Against

EMPLOYER

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey

Members: Mr M. Flood
Mr G. Whyte

heard this claim at Dublin on 30th October 2009

Representation:

Claimant : Ms Leonie Macauley B L instructed by
Denis I. Finn, Solicitors, 5 Lower Hatch Street, Dublin 2

Respondent : Ms Tracy Ennis Faherty B L instructed by
Hussey Fraser, Solicitors, 17 Northumberland Road, Dublin 4

The determination of the Tribunal was as follows:

Respondent's Case

The respondent was established in the mid 1990s and was engaged in the transport delivery service. Its owner operated the business in a sole trader capacity. Among its staff were several drivers and an office employee. That owner stated he had a working knowledge of employment legislation. However he conceded that neither written terms and conditions of employment nor a staff handbook issued to the claimant. The management of this enterprise was conducted in a relaxed and informal way. Up to 2006 the respondent tolerated "an acceptable level of errors" on the part of its drivers in the performance of their duties. However, due to a fall off in ongoing business the respondent needed to tighten up on the quality of its deliveries and its related paperwork. At that time it operated as delivery agents on behalf of two major freight and transport companies.

In describing the claimant as a very good driver the owner was critical of his communication and

administration functions. It was common practice with the claimant that he did not answer or indeed use his work mobile phone in conducting the business of the respondent. In addition he “was not good at collections”. According to the witness he gave the claimant loads of verbal warnings over those issues. In August 2008 he issued two written warnings to the claimant. The first one was dated 6 August and included the line: *Also please answer your phone*. The second dated 22 August read as follows

...after several requests regarding answering phones you still refuse to answer your phone or charge the phone and continually(sic) do not contact the office

This is a final request to do so or we have no alternative but to dismiss you from your employment at AVD.

We will discuss this matter further on Monday 25th August.

While there was a little improvement in the claimant’s performance his overall aversion to using the phone and the paper work was still a problem. In November 2008 the respondent lost the contract with the smaller of their major clients. The larger company made it known to the respondent that it would not accept any errors from them while acting on their behalf.

In early February 2009 another incident occurred regarding the claimant, a delivery and his phones. The respondent attempted to contact him for up to an hour by dialling both his work and his personal mobile phones. The claimant replied to neither phone and returned to the depot with a pallet undelivered. He explained that he had been on the phone to his partner and offered to deliver that pallet that afternoon. Due to the prevailing weather conditions that was not possible and that load was eventually dispatched to the customer the next morning.

During the course of a subsequent meeting between these two men the owner proceeded to dismiss the claimant for his refusal to answer the phone for work related calls. In accepting that the claimant was entitled to compensation for lack of notice the witness nevertheless withheld that payment as he maintained that the claimant owed him money on another issue.

The office administrator described the owner as easy going, funny and approachable who liked to think he was everyone’s friend. This witness felt that his verbal warnings to staff might not be taken seriously. She acknowledged that the respondent had come under “an awful lot of pressure” from its remaining large client. In early February 2009 this staff member spent an hour constantly trying to make telephone contact with the claimant connected with that client. There was no answer from neither of his phones.

A former driver labelled the working atmosphere at the respondent’s as jovial and described the owner as more of a friend than an employer. This witness praised the claimant as a competent driver who tended to do “silly things”. He echoed the other witnesses in indicating that the claimant’s biggest flaw was his lack of communication with the respondent on delivery details.

Claimant’s Case

While working the claimant normally had two mobile phones, a work and a personal one, with him. These phones did not have any defects that would render them inoperable. On at least one occasion he was unable to answer calls from the respondent as they were on silent mode. He had no recall of being spoken to about the way he operated those phones or how he conducted his paperwork. The witness

had no memory of receiving a handwritten letter from the owner dated 6 August 2008. He had however received a letter from that person dated 22 August. That letter was not taken seriously “due to the way the respondent was run”. The witness felt it was not made clear to him that his job was now in jeopardy.

The witness also stated that the owner had told him that he must answer his phones. He also told the Tribunal that he took the contents of the letter seriously. He indicated that he could have received and signed for a different version of that warning letter dated 22 August. The claimant acknowledged the importance of the remaining large contract the respondent still had. In early February 2009 while out on deliveries the claimant was having problems with the clutch in his delivery vehicle. He answered the phone that day and indeed spent around fifteen minutes talking to his partner on the work phone. He also spoke to a colleague at the office and noticed there was one missed call message.

The next day the owner told him that this situation with the phones could not continue. He then indicated that due to the way the claimant acted with his phones that he was now sacking him.

Determination

A jovial easygoing atmosphere may have some merit in the workplace but it is no substitute for a professional relationship among and between staff and their employer. The respondent was running a business for fifteen years and had yet failed to implement even the issuing of written terms and conditions of employment to its employees. This was not only neglectful but also a recipe for disputes such as occurred in this case.

The claimant’s attitude to telephone communication with the respondent no doubt caused problems. The Tribunal accepts that he received, albeit in a casual manner, warnings about that issue. The contents of the letter of 22 August contained an explicit warning to him about his job. Perhaps due to the culture and history of the relationship between the owner and the employees the claimant did not internalise and act on its message. The incident in early February 2009 was his undoing and he must take some responsibility for its result.

The Tribunal therefore finds that the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

The appeal under the Redundancy Payments Acts, 1967 to 2005 also fails.

The Tribunal awards the appellant €920.00 as compensation for two weeks notice under the Minimum notice and Terms of Employment Acts, 1973 to 2005

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

