

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

- *claimant*

CASE NO.

UD297/09

Against

Employer

- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr. R. Prole
Mr G. Whyte

heard this claim at Dublin on 31st July 2009 and 15th October 2009.

Representation:

Claimant: Mr. Brendan Sheehy B.L., instructed by B J O'Beirne & Co, Solicitors, 3 Church Buildings, Arklow, Co Wicklow

Respondent: Mr. Breffni O'Neill, Construction Industry Federation,
Construction House, Canal Road, Dublin 6

The determination of the Tribunal was as follows:-

Respondent's Case

Witness for the respondent hereafter known as DG gave direct sworn evidence that he is a general foreman for the respondent company. He gave evidence that the claimant who was employed as a scaffolder, had a poor attendance record at work, had regular absences and was often late for work. As a result of this poor record the witness issued him with a verbal warning on 25 April 2007. Confirmation of this warning was issued in writing to the claimant by way of a letter dated 3 May 2007 and he was informed of his right to appeal against the decision. The claimant's time-keeping and absenteeism did not improve following this warning. Accordingly, following his continuing poor record he was given a first written warning on 28 June 2007 and this was confirmed in writing

by way of a letter dated 4 July 2007. Again he was informed of his right to appeal that decision. His absenteeism and time-keeping did not improve and he was issued with a final written warning on 23 October 2007 following a disciplinary meeting held on the previous day. Again he was given the right to appeal the decision. The claimant's attendance record did not improve and, on 30 June 2008 he did not report for work. The witness telephoned the claimant on that day and informed him that he was suspended for two weeks without pay. He did not dismiss the claimant and that was the last conversation he had with the claimant.

Under cross examination he could not provide an explanation as to why the claimant's signature did not appear on his contract of employment. He was not aware if the claimant had requested and was granted permission to be absent from work on the 30 June 2008 from his direct foreman on site. There was no record of this permission been granted. He agreed that the direct foreman had the authority to grant employees time off work. He denied that the claimant telephoned him on 30 June 2008 and he denied that he telephoned him on 1 July 2008 informing him that he was dismissed.

In reply to questions from the Tribunal he accepted that his decision to suspend the claimant by way of a telephone call did not comply with the company's policies and disciplinary procedures.

Claimant's Case

The claimant gave direct sworn evidence that he was employed by the respondent since August 2004. He was dismissed in July 2008. He worked initially as a labourer and latterly as a scaffolder. He was a good worker and had a good relationship with his supervisors. He earned an average net weekly pay of €550.00. He never received a contract of employment. He received a verbal warning on 3 May 2007 and he appealed this decision. He received no reply to his appeal. He received a first written warning on 4 July 2007 but never received a final written warning. He reported for work on Friday 27 June 2008 at 7.50 am but following receipt of a telephone call he had to leave at 8.30am to visit his grandmother who was ill. Before leaving at 8.30am he sought and was granted permission to be absent from work for the rest of the day and also for Mon 30 June 2008. He was granted this permission by his direct foreman, GW.

On Monday 30 June 2008 he telephoned DG to ascertain what site he was due to work at on 1 July 2008 but DG informed him that he was suspended for the remainder of the week. The following day, 1 July 2008 DG telephoned him and informed him that he (the claimant) was no longer working for the company. He was given no opportunity to appeal this decision. Since his dismissal he has sought alternative employment as a scaffolder and on fishing trawlers but he has been unsuccessful. He has also completed a 3 day security guard training course. He has been unemployed since his dismissal.

Under cross examination he confirmed that he was aware that a number of his former work colleagues had a contract of employment. He never requested a contract of employment from the respondent. He was a member of a trade union but it did not occur to him to request a contract of employment. He accepted that he was absent and late for work on a number of occasions. He accepted that he received a verbal warning and a first written warning but denied that he was afforded the opportunity to be represented when he received the warnings. His poor time keeping and attendance records were due to traffic congestion and car accidents. Following his dismissal he contacted his union representative and a meeting was arranged with the respondent. He was not sure as why he did not attend that meeting but he felt he may have been sick. He contacted his solicitor in January 2009.

In reply to questions from the Tribunal he confirmed that 39 hours per week was his normal working week. He accepted that documentation provided to the Tribunal, indicating that he only worked an average of 26 hours per week for a period of time towards the end of 2007 and the beginning of 2008 was accurate, and agreed that this fell short of his expected normal working week.

Determination

Having carefully considered the evidence adduced by both parties, the Tribunal notes in particular that whilst the respondent agreed that they were in breach of their own disciplinary procedures it is nevertheless satisfied that the claimant substantially contributed to his dismissal by his work pattern and behaviour. Accordingly the Tribunal finds that the claimant was unfairly dismissed and awards him the sum of €2000 under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)