

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE - *claimant*

CASE NOS.  
UD995/2008  
MN1021/2009  
WT443/2009

against

EMPLOYER – *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANSIATION OF WORKING TIME ACT, 1997

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. Hayes BL

Members: Mr. P. Pierce  
Mr. N. Broughall

heard this claim at Dublin on 7<sup>th</sup> September 2009

#### **Representation:**

Claimant: Mr. Tiernan Lowey BL instructed by Mr. Killian Carthy of  
Kent Carty Solicitors, 47/48 Parnell Square, Dublin 1

Respondent: Ms. Imogen McGrath BL instructed by Mr. John Lynch of  
Whitney Moore Solicitors, Wilton Park House,  
Wilton Place, Dublin 2.

The determination of the Tribunal was as follows:

#### **Claimant's Case**

The claimant gave evidence first because the fact of dismissal was in dispute. He was employed as a general operative doing food production work. Before the 22<sup>nd</sup> July 2008, there had been no incidents or disciplinary proceedings.

On 22<sup>nd</sup> July 2008, the claimant came to work at 8.00am and was packing clams. When he finished he went for a break. It was about 11.00am. His manager phoned him to come to her and she told him what she wanted him to do next. She nominated a colleague to work with him. The new task was weighing and packing fish. He said ok but he had to clean up after the earlier work first. It is important to keep the factory clean and dry.

While he was cleaning his manager phoned him again asking where was he. He told her that when the cleaning was finished he would start the next task. In a high pitched voice she told him he should be doing what he is told and he never does that. He felt bad. She did not mention fish outside the freezer. The manager was screaming at him and threatened to dismiss him. She concluded the conversation by telling him to bring her the keys. It took him 3 minutes to reach the office.

He felt that he had been dismissed. He swiped his card, changed his clothes and gave back his key. It was a Tuesday. On Friday he came to collect his payslip and his P.45. He had no discussion with anyone about the termination of his employment. He did not have a contract of employment.

About 3 weeks later his brother contacted the company. His brother was told that his job was still available. Nobody contacted him. The claimant made no effort to contact the respondent.

The claimant was unemployed until March 2009.

The claimant's brother gave evidence. He was on holidays on 22 July 2008. When he came back he sent a fax message to his brother's manager. The managing director phoned him a few days later and told him that his brother left voluntarily but said that his brother's job was still open. He did not encourage his brother to return to his job.

### **Respondent's Case**

The manager gave evidence. She had worked with the claimant for 2 years.

On 22 July 2008 she asked him to sort out the freezer. He was not doing it so she phoned him to find out where he was. He was in the shellfish factory. She told him to leave the cleaning and come back to the freezer. He had taken some pallets of frozen fish into the unfrozen area and they would start to defrost very soon. She did not threaten to dismiss the claimant. He told her he would finish the job he was doing. He used abusive language towards her. He said that he was finished and that he was leaving.

She asked him if he was leaving of his own accord. The claimant was a good worker and there had been no disciplinary issues with him. She did not want to lose him. On the 22 July 2008 he acted out of character. When he gave her the keys she did not ask for an explanation. When she received the fax from the claimant's brother she gave it to the managing director. She had no further contact with the claimant.

The managing director gave evidence. He learned of the incident on 22 July 2008 a week or ten days later. When he was given the fax he phoned the claimant's brother. He believed the claimant had walked out. He told the claimant's brother that the claimant could return to work. He did not contact the claimant directly himself.

## **Determination**

The Tribunal carefully considered the evidence adduced. The respondent's evidence was that the claimant was a competent and valuable employee. For reasons that remain unclear the claimant resigned his employment on 22 July 2008. The Tribunal may consider it unfortunate that the respondent did not contact the claimant himself and resolve the issues, particularly given the willingness to take him back, had he wished. However the Tribunal accepts that the respondent is under no obligation to do so. The Tribunal finds that the respondent is entitled to accept an unambiguous resignation and the claimant's action amounted to clear termination of his employment. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails. The claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and under the Organisation of Working Time Act, 1997 also fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)