

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE – claimant

CASE NO.

UD1/2009

MN2/2009

EMPLOYEE – claimant

UD2/2009

MN3/2009

EMPLOYEE – claimant

MN1/2009

against

EMPLOYER – respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms M Levey BL

Members: Mr M Murphy
Ms M Mulcahy

heard this claim at Dublin on 15th July 2009, 2nd November 2009 and 15th December 2009

Representation:

Claimant(s): Mr. Blazej Nowak
Polish Consultancy Enterprise
19 Talbot Street, Dublin 1

Respondent(s): Ms. Deirdre Gavin
IBEC
Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

The three claimants worked as general operatives for the respondent, a printing company. The claimants contend that they were dismissed on Monday 15th September 2008. Two of the claimants commenced on 7th March 2006 and one commenced on 25th February 2008. The third claimant is seeking redress under the minimum notice acts only.

The first claimant gave evidence that he worked the night shift on September 11th 2008 from 7pm until 7am the following morning, Friday 12th September 2008. In the morning the claimant asked if there was overtime work that night, but the manager said there wasn't. The claimant went home to

bed and switched off his phone. The claimant received a message at 7pm that evening from a colleague who said that the claimant was sacked. The claimant went to work with his brother, the third named claimant, the following Monday, 15th September 2008, at 5pm. His next scheduled shift began at 7pm that day. He spoke to the manager and asked why he had been dismissed. The manager told him that the owner said there was no more work for the claimant or his brother.

The three claimants went to the workplace the following Wednesday, 17th September 2008, and asked to speak to the owner. The claimant contended that the owner ignored them and did not meet them.

The claimants contacted a representative on Thursday 18th September 2008 who wrote to the owner on their behalf to seek an explanation for their dismissal. A meeting was held the following Tuesday, 23rd September 2008, with the claimants and the owner. Before the meeting began the first claimant handed the owner Rights Commissioner claim forms. The owner denied that he had ever said that there was no more work and invited the claimants to come back to work. The claimant refused as he felt that he had been treated badly and he did not feel comfortable working for the respondent company again.

During cross-examination the claimant disputed the owner's contention, contained in a letter dated 23rd September 2008, that the claimants had not attended work on Monday 15th September and Tuesday 16th September 2008. The claimant stated that he was waiting around after the end of his shift on Friday 12th September and was offered to start a shift at 1pm, but he refused this offer. The claimant contended that while he didn't normally work on Fridays, if he refused to work he could be dismissed. On the Monday, when the manager said he was dismissed, that claimant sought his documentation. The manager told him to come back on Wednesday. The claimant agreed that he had recently asked to change onto the day shift, as it would have been more suitable for him. The claimant had also sought a pay rise on three occasions, the last time being in August 2008. The claimant contended that Polish workers were paid less than Irish workers.

The third named claimant gave evidence that he went to the workplace with his brother on Monday 15th September 2008 at 5pm to find out about the text message, which his brother had received the previous Friday. The manager told them that they were not to clock in, as they were not working there anymore.

During cross-examination the claimant stated that he had waited with his brother on Friday morning to see if there was extra work available that night. The claimant did not receive any calls or texts that day from work. He contended that he did report for work on Monday at 5pm. The claimant attended the meeting on 23rd September 2008 and was told by the owner that he had not been dismissed. But he decided he could not return after having been dismissed without explanation.

The second named claimant gave evidence on the last day of hearing, as he had been unable to attend the second day of hearing. He gave evidence that he finished his shift at 7am on Friday 12th September 2008. The manager offered him another shift commencing at 1pm that day, but he declined the offer as he was tired and wanted to go home. He reported for work the following Monday morning at 7am. When he arrived the manager informed him that the owner was angry with him and that he was not working there anymore.

He went to the workplace the following Wednesday to talk about their situation. The manager told them that the owner was not there. The claimant asked for his P45 and the manager told him it was sent in the post. He had no further contact from the company until the following week when the

owner said that they had not been dismissed and offered them their jobs back. The claimant did not accept the offer as he had been a good worker for two and a half years and he felt he had been treated like rubbish.

During cross-examination the claimant disputed that manager's assertion that he had not reported for work that morning. He stated that he had not clocked in on the Monday morning, as he had not been allowed. He had come in alone and a co-worker, the same co-worker who sent the first claimant a text the previous Friday, told him he was not working and so he went to speak to the manager who confirmed it. The claimant contended that the manager told him that his P45 was in the post and did not know why the P45 he had was dated October 3rd 2008.

Respondent's Case:

The manager of the respondent company gave evidence that he was responsible for the scheduling of staff and that he had had a good relationship with the claimants. The roster was normally prepared on Monday morning, but that it could change due to the nature of the printing business. On Friday 12th September 2008 the manager did not know if a job was going ahead that day and was waiting to find out. He phoned the claimant's and they said they weren't coming in.

When they didn't show up for that shift the manager didn't know if they would turn up the following Monday. The second named claimant arrived at the workplace at 3pm on Monday 15th September 2008 and asked for work that night, but there was no night shift that night so the manager told him that there was no work that day. Other employees had put in for his shifts, as there had been no contact from him. He told the second named claimant to come to work the following day at 7pm. The other claimants were not rostered as there were no night shifts. The manager contended that the claimants had been put on the roster for the Tuesday.

The claimants did not report for work on Tuesday, but came in on Wednesday, at lunchtime, to see the owner, but he was not there. They wanted their P45s, which the manager said he could not give to them, as he did not have the authority to do so. The claimants wanted to speak to the accounts person. The manager contended that claimants could not have any reason to believe that they were dismissed.

The manager attended the meeting the following week on Tuesday 23rd September 2008. The first claimant said that he was unhappy working shifts and did not want to work them anymore. He spoke for the two other claimants. They requested their P45s. The owner told them they were dismissing themselves and they said they didn't want to work there anymore. The claimants were not replaced, as they did not know if they would come back or not. Three staff members were a lot to lose at once and all the other staff members had worked extra shifts to cover.

During cross-examination the manager agreed that the claimants had said on Friday that they weren't coming in later. He disputed that they had been told to come in on the Monday, as the roster had not yet been done. He told them he would call them, which would have been when they were on the bus home. The manager contended that he did not meet the two claimants who contended that they came in at 5pm on Monday. His shift finished at 4.30pm.

The manager contended that it was normal to phone employees when there was work on, as it could change at any time. He contended that on Friday 12th September he was waiting to see if the night shift would be running, and therefore work for the claimants, not the 1pm shift. He had to call off the night shift, as they were not there. He contended that the co-worker who sent the text message to the first claimant had no authority to do so.

The office manager gave evidence that on Wednesday, 17th September 2008, the claimants came to the office seeking their P45s. She told them that she knew nothing about it. She had not been instructed to issue anyone's P45. The office manager was present at the meeting the following week. The company had a disciplinary procedure and she contended that if an employee were being dismissed she would know about it in advance. She processed the P45s on October 3rd 2008. She contended that she had not received a registered letter sent by the claimant's representative, and signed for by another member of staff, on September 19th 2008.

The owner of the company gave evidence that he had a good relationship with the claimants. The first time he became aware of the matter was September 23rd 2008 when the claimants came to the factory and asked for their P45s. He said he didn't have them, as they were not requested. The owner asked if they were available for work and they refused and said that they were not interested in working for the company anymore. The owner wrote to the claimants to find out if they were available to return to work. The claimants complained that they were getting less overtime, but the owner explained that, as margins were tighter, overtime had to be reduced.

The owner explained that his car could be on the premises when he was not there as his car was used for deliveries and he used another car to do sales calls. He contended that he would have met the claimants if he had been present.

The owner disputed that the claimants had ever been dismissed and contended that the disciplinary procedure would have to be used to dismiss an employee. There were no disciplinary procedures being brought against the claimants at the time. The decision to dismiss could only be taken by the owner. The claimants were not immediately replaced, but had been since.

During cross-examination the owner stated that he received the letter, about taking an unfair dismissal case against the company, from the claimants when they came in on the 23rd September 2008. He could not say if he had seen the letter prior to the meeting. The first claimant told him that he was taking an unfair dismissal case, even though their P45s had not been issued. He disputed that he had instructed the manager to dismiss the claimants.

Determination:

The Tribunal finds it unlikely that the claimants would believe that their jobs were gone on the basis of a text message from a colleague, whom they acknowledged had no authority to dismiss them. Even if everything occurred as stated by the claimants, and there is huge conflict, they were offered their jobs back in the letters dated 23rd September 2008 and they did not accept. Accordingly, the claims under the Unfair Dismissals Acts, 1977 to 2007, and the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)