

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

UD564/2009

RP581/2009

MN825/2009

Against

EMPLOYER

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr. B. Kealy  
Ms. E. Brezina

heard this claim at Dublin on 27th November 2009  
and 15th January 2010

Representation:

Claimant(s) Ms. Audrey Coen BL instructed by Ms. Sharon Gardner, C.P. Crowley & Co.,  
Solicitors, Augustine House, Merchants Road, Galway

Respondent(s): Mr Patrick Gleeson, Gleeson & Associates, Solicitors, The  
Standhouse, Rathoath, Co. Meath

The determination of the Tribunal was as follows:-

#### **Respondent's Case**

AB a director of the respondent company gave evidence. On 15 January 2009 AB phoned the claimant and asked him for a ladder belonging to the company. AB arrived on site on 15 January 2009 to collect the ladder but the claimant said he did not have it and was verbally abusive towards AB. He then came "face to face" with AB and refused to collect the ladder stating that the ladder did not belong to AB and that he had given it to someone else in Cavan. The claimant then stormed off the job saying "I'm not going to do it, f---k you". AB took this to mean the claimant was resigning.

The ladder had been requested on a number of previous occasions and there had been two previous

incidents with the claimant. AB had a written warning, for the claimant, with him on the day in question but he did not get to issue it because the claimant had stormed off the site. AB had previously given verbal warnings to the claimant.

EB a director of the respondent company gave evidence. EB received a phone call from the claimant on 15 January 2009. This was after the incident with AB and EB had already spoken to AB about this. The claimant referred to AB in derogatory terms. EB told him that AB was his boss and that he should do what he asked. The claimant told EB to F—K off and hung up.

EB had previously given verbal warnings to the claimant and referred specifically to one in relation to a health and safety matter. However he confirmed that there was no written disciplinary procedure nor had the claimant been issued a contract of employment.

On 16 January 2009 the claimant phoned EB and asked if he could return to work. EB asked him to come to the meeting scheduled for 4pm to which he replied, “No I will come to your house and sort it out”. However the claimant did attend the meeting and was given a letter and informed that he was suspended pending investigation into the incident of 15 January 2009. The claimant rang EB later the following week saying that he had received advice from the Citizens Information Centre and that they could not do this to him. EB told him “we will send you what you are due”.

JB told the Tribunal he was an employee of the respondent since 2000 and he worked with the claimant. On 15 January 2009 he undertook work on a job and he told the claimant to finish flashing the chimney. The claimant instructed DD to do this and DD should not have been on the roof. When JB saw DD on the roof he told him to get down and DD did not have an issue with this. DD hit the roof with a teleporter. A meeting was arranged for the 16 January 2009. He recalled at the meeting a talk about the downturn. The claimant threw a wobbler at the meeting and was told he would no longer work on Saturday and Sunday. The claimant had an argument with EB. EB gave him an envelope and the claimant asked when he could come back.

In cross-examination he stated that he was related to the director of the respondent. DD was not a qualified roofer. He received a text message from AB regarding the meeting on 16 January 2009. At this meeting the claimant was given an envelope in front of everyone. EB told the claimant that the content of the letter related to the incident, which occurred on 15 January 2009. The claimant said to EB why not just sack me and that was it. EB told him that he did not want to sack him.

In re-examination JB stated that the claimant queried the content of the letter but he did not open it.

DH told the Tribunal he was employed with the respondent since 2000 as a roof tiler. On 16 January 2009 he was on site with the claimant. The claimant had an argument with EB about a ladder. The claimant left the site to get a ladder. DH was told to go home and the claimant contacted him and told him he was returning to the site with the ladder. He could not recall the time this happened; it was some time after the incident. The claimant did not go to Cavan for the ladder. The claimant called AB “a wanker” and the claimant walked off site. AB was not aggressive; AB told the claimant he wanted his ladder. The claimant left the site later for a meeting in the office. At the meeting an announcement was made that there was a downturn in the business, the claimant was given a letter and an argument ensued about the letter. The claimant was not disciplined in front of him, he was given a letter.

In cross-examination he stated that he did not know if there was a different ladder in Cavan and AB requested the ladder. He received a text to attend a meeting and at the outset of the meeting a

downturn was mentioned. The claimant was given a letter and he wanted to know what the letter was for. He did not recall AB telling the claimant that he was given a written warning. The meeting lasted an hour.

In re examination he stated that AB was adamant about the ladder he requested and a roofer checked his own ladder.

### **Claimant's Case**

The claimant told the Tribunal that he commenced employment with the respondent ten years ago. Initially he worked full time and on Saturdays. EB trained him and he served an apprenticeship for two and a half years. After two years he undertook work on his own. Jobs were allocated and he was given instruction as to where to go. He reported on site between 8a.m and 9am. He was paid for work he completed. He did not miss many days in work and if he was absent he informed the respondent. EB provided him with basic tools and the claimant reimbursed EB for these. EB and the claimant were very close friends. He drove a small van and looked after the respondent's ladder, which was a large fold up ladder. He had left this ladder in his mother's house in Cavan and EB told him to hold on to this. During 2000 and 2001 he had no problem with EB until the meeting on 16 January 2009. In 2006/2007 he received one or two verbal warnings. AB and EB looked after different sites. The claimant considered EB his boss. The first time that the claimant was in the office was on 16 January 2009. If he had a problem he telephoned EB and if a meeting was necessary they could meet at the house. He considered EB a very good friend. On 16 January 2009 he was on site, the ladder was in Cavan and he did not tell EB this. AB told him to go home and get the ladder. The claimant lost the head a bit and he drove to Cavan for the ladder. On the way to Cavan he tried to contact EB to let him know that AB had asked him to go to Cavan and he was unable to contact EB.

He returned to the site between 10.30 and 10.45a.m. and there was no one there. He telephoned DH who informed the claimant that he was sent home due to the weather. He left the ladder in the shed on the premises where the respondent was undertaking the work and he tried to telephone EB and AB. He received a text message that there was a meeting later in the day. At the meeting EB spoke about a downturn and EB told him that he was giving him a written warning and he was suspended. EB told him that he had received two days extra pay the week before. He was given an envelope and informed he was suspended in front of everyone.

He then went home and the next contact he had with EB was on Monday 19 January 2008. He did not telephone AB. He asked EB how long he was suspended for and when he was coming back to work. EB told him that he would have to talk to AB. EB told him he did not think that the claimant would be coming back and the claimant told EB that he could not do that. He was told he was being suspended until further notice and that was it. If he missed a day in work this would be deducted from his payslip. He was late for work on 17 October 2008 as he had to bring his son to school. He did not resign his job with the respondent.

Since his dismissal he has registered with FAS. He has applied for jobs and is currently unemployed. He works as a helper on a van for one to two days a week. He hopes to have a job by February 2010. He took out a personal loan and he checked with EB before he took the loan out. EB was a very good friend and he loaned him money, which he did not have a difficulty paying back.

In cross-examination he stated that on 16 January 2009 he was sent off site to get a ladder. AB

asked for a specific fold up ladder, it was the property of EB. He could have called AB a “wanker” and he did not get the chance to apologise to him. He telephoned EB after the incident who told him that he should not have spoken to AB the way he did. He reiterated that he did not walk off the site and he was sent from the site. He did not receive previous warnings. He did not act aggressively towards his employer. He did not call to EB’s house between 15 and 20 January 2009. He agreed non-compliance with health and safety legislation was a dismissible offence. At the meeting on 16 January 2009 EB informed employees the direction the respondent was going. At the meeting the claimant raised an objection to two days that he did not get paid. He did not get annoyed at the meeting. After he raised the issue of his wages he was given an envelope and suspended. Between 2008 to 2009 he may have been late once or twice but he would always telephone the respondent. He never missed days in work and he started between 8.30 to 9.00a.m. EB told him that he could not discuss the incident with him and AB would not talk to him

In answer to questions from the Tribunal he stated that he and AB had arguments in the past for no reason in particular.

A witness on behalf of the claimant told the Tribunal that he was employed with the respondent as a roof tiler from 2005 until mid 2008. He worked with the claimant. Health and safety was good on building sites. Health and safety was not so good on private houses and there was no scaffolding on some sites. He did not sign a health and safety document but talks about health and safety were given on site.

In cross-examination he stated that employees undertook work on a private house once every two months. EB was a good employer and AB was not a good employer. He left the respondent’s employment as he obtained a better job.

### **Determination**

The behaviour of the claimant in his employment merited the invoking of disciplinary procedures by the respondent. The proper application of such procedures by the respondent would have given the claimant the right to address and respond to issues of a disciplinary nature. The manner in which the respondent decided to discipline the claimant deprived him of this right and the respondent therefore acted unfairly in the procedure that they adopted and therefore unfairly dismissed the claimant. The claimant because of his behaviour in the course of his employment significantly contributed to his dismissal. The Tribunal awards the claimant the sum of €7,000.00 under the Unfair Dismissals Acts, 1977 to 2007. The claimant is entitled to four weeks notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 in the amount of €2,927.40 (€731.85 per week). The claim under the Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

