

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO.
UD925/2009
RP1046/2009
MN953/2009
WT410/2009

against

EMPLOYER - respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony BL

Members: Mr. W. O'Carroll
Mr. A. Butler

heard these claims in Ennis on 23 February 2010

Representation:

Claimant(s):
Mr. Gearoid Howard, Crimmins Howard, Solicitors,
Dolmen House, Shannon, Co Clare.

Respondent(s):
Ms. Sinead Kenny, McMahan & Williams, Solicitors,
Kilrush, Co. Clare

The determination of the Tribunal was as follows:-

Summary of the Evidence

The respondent is a painting contractor. Through one of his Polish employees, the respondent recruited the claimant from Poland. The claimant was trained in and became “an excellent” and top grade painter. The claimant did not have good English and communication with him was often through a fellow employee who spoke good English.

The respondent’s supervisor had worked with the claimant for four years. It was his evidence that during the last nine months of his employment the claimant became withdrawn, was sometimes aggressive, did not follow instructions and did not seem to be getting on with his fellow workers. In support of this allegation he cited that he had to ask him twice not to come to work for high profile clients carrying his tools in a Supervalu canvas bag. While it was common case that the supervisor threw the canvas bag in the bin the claimant’s evidence, which was disputed by the supervisor, was that the tools were in the bag when it was thrown in the bin. The claimant then used a travel bag to carry his tools. The other complaint put forward by the supervisor was that while painting the project manager’s house, the claimant refused to partake in the morning coffee provided by the project manager’s wife’s and he sat at the table using his own flask. The claimant’s evidence was that he did not drink coffee.

It was common case that an incident occurred between the claimant and the supervisor in the bathroom of the project manager’s house, where the claimant was working, on 4 March 2009. According to the supervisor when he went to the bathroom shortly after midday to ask the claimant to clean it up (in case the family needed to use it at lunch time) the claimant became aggressive and pushed him in the forearm. The supervisor felt very intimidated. According to the claimant the supervisor came into the bathroom and when he was touching his forearm the claimant asked him not to touch him. The claimant denied pushing/assaulting the supervisor. It was only at the hearing before the Tribunal that the claimant first became aware of the alleged reason for his dismissal. The supervisor denied touching the claimant.

Following the incident the supervisor telephoned the respondent and told him the claimant had to be sacked because he was “out of control” and he (the supervisor) was scared and intimidated. The respondent, considering it to be a health and safety issue, instructed the supervisor to dismiss the claimant, which he did later the same day. The supervisor then called another employee and asked him to also tell the claimant that he was fired. The respondent fully accepted what his supervisor had told him. It was the respondent’s evidence, which was contradicted by the claimant, that he asked the claimant, the following day, if he understood why he was dismissed and that he had replied, “Yes, boss”. The claimant’s evidence was that he had been happy working for the respondent and he had just wanted to keep his job.

Determination

At the very least fair procedures require that an employee is entitled to know the case against him and have the opportunity to answer that case and to present his defence. There was a complete failure by the respondent to comply with these principles when dismissing the claimant. Furthermore, the Tribunal accepts the claimant’s version of the incident in the bathroom. The Tribunal unanimously finds that the dismissal was unfair and awards the claimant the sum of €30,000.00 in compensation under the Unfair Dismissals Acts 1977 to 2007. The Tribunal further awards the claimant the sum of € 1,168.16, being the equivalent of two weeks’ pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The claims under the Redundancy Payments Acts and the Organisation of Working Time Act were withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)