

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD802/2009

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly B L

Members: Mr L. Tobin
Mr J. Flannery

heard this claim at Wicklow on 19th March 2010

Representation:

Claimant : Mr Michael Forde B L instructed by
Mr Derek Ryan, XXXXX Co Westmeath

Respondent : Ms Pippa Matthews B L instructed by
Millett & Matthews, Solicitors, Main Street, Baltinglass, Co. Wicklow

The determination of the Tribunal was as follows:

Respondent's Case

The respondent is a modest sized company operating a taxi service based in west Wicklow. It was established in the early 1990s and its owner described himself as a workingman who got on well with his employees. He also indicated informality was a main characteristic in the running of this business. Most of the staff lived locally and tended to socialise with each other. Those employees also refused to sign contracts of employment and their terms and conditions of employment were not issued to them. The owner and staff held weekly meetings where work issues were discussed. There was a lot of "banter" at those gatherings and the claimant "gave back as much as he got".

Up to 2006 the owner had no problems with the work performance of the claimant. That situation changed in the first half of that year when the owner discovered that the claimant did not have the required public service vehicle licence to drive taxis. He had been driving such vehicles for the

previous three years without this licence but had told the owner at that time that he had this qualification. Despite issuing the claimant with his P45 on that occasion the owner decided not to dismiss him as he “was very good at his job and very accommodating”. By March that year the owner issued the claimant with a written warning over his behaviour and general conduct. By that time the claimant had been late for appointments and had “drink taken” in the course of his working day. Subsequent to that time and up to 2008 there was a noticeable improvement in the claimant’s performance.

Each driver was expected to work a flexible eight hours a day and to build up a rapport with customers. Reliability and punctuality were essential to maintain and develop business. There was a downturn in business in 2008 and the respondent was feeling the effects of that up to the present. There was also deterioration in the services offered by the claimant as he either arrived late for appointments or failed to show up. A highly valued customer was particularly critical of the claimant’s lack of punctuality. The owner said he spoke to the claimant about his behaviour “but not getting anywhere” with him.

In November the owner contacted the claimant and asked him to attend to an early morning run to the airport and other fares. The claimant refused and later took a day’s leave despite having exhausted his holiday entitlements. When these two men met shortly after that incident the owner told the claimant his work with company was now finished. He followed that up with a brief hand written note to him confirming his dismissal. The owner denied ever offering the claimant a three day week or of implementing a policy to deprive him of work. He acknowledged he gets excited at times in dealing with his staff but never “loses the head”.

The owner told the Tribunal that the main reason for the claimant’s dismissal was his lateness. He had left the respondent “in the lurch” on several occasions and the accumulation of these incidents also was a cause of the dismissal. The owner “holds his hands up” when it came to proper procedures in dealing with this case.

Claimant’s Case

The claimant accepted he did not have the mandatory drivers’ licence at the relevant time but had rectified that when a client sought it. The witness also conceded that he told the owner he had one when in fact that was not the case. Among the expectations of customers was punctuality and the claimant stated that on occasions he was late for appointments. However, that unpunctuality was generally caused either by external factors or the changing circumstances of customers. He certainly never drunk and drove as alleged by the respondent.

Prior to meeting the owner on 21 November 2008 the claimant had formed the impression that the respondent wanted “to get rid of me”. The owner wanted to place him on a three-day week and indicated to him that if he did not like it then he could “stuff it”.

The witness said that he did not refuse to take an early morning run as stated by the owner. However, when he questioned certain aspects of his pay and conditions on that occasion the owner told him to forget the run, as he would do it himself. When the two met later the owner went “ballistic”. He was very angry at that meeting when he dismissed the claimant.

Determination

The Tribunal was presented with some conflicting evidence in this case. The respondent's casual and informal approach in dealing with its employees was a feature of this case. Likewise the claimant's approach towards his work lacked professionalism. The Tribunal is alarmed that he apparently drove the respondent's vehicles illegally for a number of years. This in itself was properly a justifiable reason to dismiss him. However, that was not the reason given for his dismissal.

The Tribunal was not impressed with either parties' evidence or *modus operandi*. The respondent was correct in their acceptance in not adhering to proper procedures. For that reason alone the Tribunal finds that this dismissal was not fair. Through his behaviour however the claimant contributed significantly to his own dismissal. Having regard to all the circumstances of this case the Tribunal awards €1150.00 as compensation to the claimant under the Unfair Dismissals Acts, 1977 to 2007

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

