

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD964/2009,
RP1094/2009
MN982/2009

against

EMPLOYER
Under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr T. Gill
Mr O. Nulty

heard this claim at Sligo on 24th February 2010

Representation:

Claimant : Mr. Robert Walsh, McGovern Walsh & Co., Solicitors, Pearse Plaza,
Pearse Road, Sligo

Respondent : O'Boyle, Solicitors, Courtyard, The Mall, Sligo

The determination of the Tribunal was as follows:

It was the respondent's contention that the claimant had resigned from their employment.
Dismissal was therefore in dispute.

Claimant's Case

The claimant who commenced employment in March 2004 with the respondent mainly worked on a specialised lathe machine on the factory floor. He was the only employee who used that machine and he held one of the main jobs in the company. Around that time the company employed up to ten workers and had two managers.

On 12 August 2008 the claimant called into an office and told the general manger that he was thinking of leaving the company to seek employment elsewhere as a night worker. While he had no recall of that manager's response the witness described that brief exchange with him as a simple conversation. He was adamant that he never told that manager that he was actually leaving. The

witness also stated that he had no recall of speaking to the production manager subsequent to his discussion with the general manager.

Within a number of weeks of that exchange the claimant noticed the presence of non-staff people on the premises. By mid September he was asked to train a newly recruited employee on the workings of that specialised machine. He undertook that task and duly worked alongside this new colleague for two weeks. Following that the claimant attended to other work on different machines. This was not an uncommon practice within the factory.

It was the claimant's impression at the time that the respondent was employing more staff as the factory was busy and the sight of new staff caused him no concern. Around that time he told the general manager that he still had no alternative work to go to. The witness added that he made it clear to that manager at the time that he never gave him his notice of resigning. At that stage he did not feel his own job was under threat.

On 6 November 2008 the claimant was approached by the general manager who told him that there was no more work for him and that he need not report for work for the rest of that week and the following week. He was "taken aback" at that news, as it was the first time he heard that he had no work. Shortly after this development the claimant approached the general manager with a payment protection form and asked him to fill into some relevant sections. Following a brief conversation that manager stated that the reason for the claimant's unemployment was because the company had no work for him. The general manager also wrote that the claimant would receive his redundancy form RP50.

The claimant said that he received a reference from the respondent signed by the general manager dated 6 October 2008 stating that he had been let go. That letter was given to him in mid November.

Respondent's Case

The general manager said he was a friend and former neighbour of the claimant and described him as a good worker. On 12 August 2008 the claimant approached him to say that he was leaving the company as a close relative was getting him a job as a night porter in a local hotel. The witness was disappointed at that news and stated that since this would put the respondent under pressure asked the claimant to stay on until a replacement was found and trained into his job. The general manager said that despite the claimant stating he had a job elsewhere he still agreed to stay on until that task was done.

Following that announcement the witness contacted the managing director in Germany and briefed him on this situation. That manager in turn told the witness to recruit a replacement for the claimant. Following a series of interviews the respondent hired two new staff one of which was assigned to the claimant's workstation. He asked the claimant to train that new colleague on the specialised machine. The training of the new employee commenced in mid September. From 12 August up to that time the general manager was certain that the claimant was still leaving the company. However, when he inquired from him at the end of September about his movement to another job the claimant responded that the job at the hotel did not materialise but that another relative was trying to secure him another job with a new employer. He never told the witness at any stage that he was now not leaving and he had expected the claimant to leave at the conclusion of that training. By then the general manager felt some sympathy for the claimant and made work for him just to keep him in a job.

That situation however could not last for long and on 6 November 2008 the witness told the claimant that there was no more work for him. He was fully paid up to the 14 November but was not required to report for work during that period. In accepting he signed a payment protection form the general manager said he did this as a favour for the claimant's as he wanted to help him out. The witness said that the respondent did not issue a reference to the claimant but that the letter dated 6 October 2008 was for the purposes of the claimant's social welfare application. Again the witness said he signed this as a favour and added that its contents were not correct. He added that a clerical error resulted in a wrong date in that letter and it should have been dated sometime in mid November.

It never occurred to the witness to commit to writing any of the exchanges he had with the claimant. No notes of meetings were made nor written correspondence entered into between the respondent and the claimant in this case.

The production manager said that he spoke to the claimant on 12 August and got the clear impression from him that he was leaving as he had another job "on the horizon". The general manager had earlier told this witness that the claimant was leaving.

Determination

The Tribunal was faced with a conflict of evidence in this case particularly in relation to the discussion between the claimant and the general manager. Each party gave a different version and interpretation of events to their discussion on 12 August 2008 and neither had independent witness to support their contrasting accounts. In addition no written record of that exchange was produced. The documentation that the respondent did produce in evidence, emanating from the respondent, was stated to be inaccurate and misleading by the general manager. The Tribunal was not impressed with the way that witness dealt with those documents. The information he supplied on those forms was not accurate according to his sworn evidence, and may have misled other parties. However, despite this previous inaccuracy the Tribunal considered that the general manager gave truthful evidence at the hearing of the claimant's claim. The Tribunal was not convinced by the claimant's evidence in relation to the training by him of the new employee, and that he claimed to see no significance in being asked to train a new worker on what was his primary machine. It seems highly improbable that the claimant would pay no heed to being asked to train a potential replacement for himself, especially where on his own evidence, he himself had brought up the possibility of leaving work.

Having carefully considered the evidence the Tribunal finds that, on the balance of probability, that the claimant actually did indicate to the respondent his intention to resign from the company. It follows therefore that a dismissal did not occur in this case. There was also no evidence that the claimant's position was made redundant.

The claim under the Unfair Dismissal Acts, 1977 to 2007 fails.

The appeal under the Redundancy Payments Acts, 1967 to 2005 also fails.

Since this was a resignation an appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 does not apply in this case and therefore fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

