

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

- *claimant*

UD1547/2009

against

Employer

- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr G. Hanlon

Members: Mr D. Peakin
Ms M. Maher

heard this claim at Dublin on 14th July 2010

Representation:

Claimant(s): Mr. Damien Ryan BL instructed by
Mr. David Hickey, F.H. O'Reilly And Company, Solicitors, The Red Church,
326 North Circular Road, Phibsborough, Dublin 7

Respondent(s): Mr. David Allen, Solicitor O'Keeffe Moore & Woodcock, Solicitors, Lincoln
House, Lincoln Place, Dublin 2

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant told the Tribunal that he was eighteen when he commenced employment with the respondent as an apprentice mechanic. Initially he helped to take off wheels, swept the floor and helped to get tools. He reported to JR and his son CR took over the business in 2000. He had a good working relationship with CR but on occasion he made disparaging remarks to him and undermined him in front of customers. JR told him that he was the boss and that he would tell him what to do. If he made a mistake he did not receive a verbal or written warning.

He asked his employer in the week prior to Friday 29 May 2008 if he could have a days leave on Friday 29 May 2009. CR told him that he could not have the day off as his father was going into hospital. The claimant then asked CR if he could leave work at 3p.m. on Friday 29 May and he agreed to this. On 29 May 2009 when he reported for work CR asked him if he could go to the tax

office. He told CR that he could remain in work until 4p.m. and CR told him that that he was not going anywhere until 5.30p.m. CR then asked him to sign a note that he the claimant had left work on Friday 29 May 2009 at 15.29 without permission from the owner CR and he was told if he left there would be no job to come back to. The following Tuesday the claimant sent CR a text message that he was going to the doctor and CR told him that he had left work of his own accord. After this the claimant was out of work until the end of July/August 2009 and he then obtained alternative employment at a lower rate of pay.

The claimant was due to take up alternative employment in 2004 but he changed his mind. He informed JR of this and he told the claimant he could remain on in work. He did not receive terms and conditions of employment or any documentation in relation to paid leave, working hours and health and safety.

In cross-examination he stated that he served four years as an apprentice with the respondent and continued to work there. Initially when he commenced employment with the respondent he was told to take his holidays the first two weeks in August. On occasions prior to 2009 he could not get days off. In February 2009 his girlfriend told him that she had booked a weekend away in Las Vegas in April 2009. CR asked him to change his flight and he told CR that he needed extra money to change his flight. JR knew the week before that the claimant was going to Las Vegas and CR was going on holiday on Friday of that week. He became aware that JR was going into hospital on Thursday 29 May 2009 that week. JR was retired for a number of years but he came to the garage and undertook paperwork and took in cash. He did not leave his employment in 2004 and he did not receive a P45.

In re-examination he stated that when his girlfriend booked the flights to Las Vegas he asked JR for the time off.

In answer to questions from the Tribunal he stated that initially the respondent had four employees in total. During his time with the respondent a number of employees started and left. On 29 May 2009 the claimant, another employee and CR were in work.

Respondents Case

CR told the Tribunal that the claimant started work in the 1990s and he knew the claimant for twelve years. The claimant was a very competent and loyal employee. In 2004 the claimant told him that he was leaving as he had obtained alternative employment. On 15 November 2004 the claimant asked to return to the respondent. For the past ten years all staff worked with each other and an employee's holiday was set in stone. Certain people had to be on the premises at all times.

He had his bachelor party booked in 2008 and he got married in July 2009. In April 2009 the claimant told him that his girlfriend had booked a surprise holiday. He told the claimant to take holidays either the week before or week after. CR was due to go to New York on the Wednesday before. He received a text from the claimant on Thursday that he was delayed in Heathrow and he told him to stay at home until Monday. He told the claimant that if this ever happened again that it would have grave consequences. He gave him two weeks wages and he received an apology. The claimant made a request on 13/14 May 2009 for a days leave on 29 May 2009 and his response was "do you know that my father is going to be in hospital on that day". The claimant reported for work on 29 May 2009 and he asked him to go to the tax office. The claimant asked to leave early and he told the claimant that the job was not finished. The claimant told him that he had his flight booked, this was about 3p.m. He told the claimant that he would lose his job if he left.

Regarding a note which was presented to the Tribunal which stated “I G C left work on Friday 29 May 2009 15:29 without permission from owner CR and was told if he left there would be no job to come back to” he stated that he wrote the first part while he was having a discussion with the claimant. He tried to reason with the claimant as to why he was leaving. His father had no involvement with the business since July 2006.

In cross-examination he stated that the claimant left his job in 2004 and was given a P45. The claimant worked out his notice period of three weeks. In twelve years CR and the claimant had a good working relationship. The claimant was not given a written warning. He asked the claimant for one day of loyalty and he could not give it to him. The claimant was very popular with the clients and was a valued member of staff.

In answer to questions from the Tribunal he stated that the claimant was not given a contract of employment. The claimant was told to report for work on time. In 2006 five staff were employed and three were employed in 2009. The claimant should have asked him for his holidays. He disagreed that if the claimant did not sign the document, which he presented to him on 29 May 2009, that he would not receive his wages. Both the claimant and the witness signed this document.

He took over the business completely in 2006. His father came in to the office occasionally to answer the telephone. On 29 May 2009 he and the other employee worked until 8.30p.m. to complete the work. The hours of work were from 9a.m. until 5.30p.m. He sent the claimant to the Tax Office early on 29 May 2010 as they were waiting for a part to come in.

Determination

Having heard all the evidence adduced at the hearing the Tribunal finds that the respondent did not have any grievance procedures or disciplinary procedures in place. The claimant was not given a contract of employment and was not given any written warnings. The Tribunal finds in all the circumstances that the claimant was unfairly dismissed and awards him compensation of €8000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

