

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE - *claimant*

UD1046/2009

CASE NO.

RP1186/2009

Against  
EMPLOYER -*respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr D. Hayes

Members: Mr. A. O'Mara  
Mr T. Brady

heard this claim at Navan on 26th March 2010

#### Representation:

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Claimant: Mr. Adrian Kelly, A B O'Reilly Dolan & Co, Solicitors, 27 Bridge Street, Cootehill,  
Co Cavan

Respondent: In Person

The determination of the Tribunal was as follows: -

#### Claimant's Case

The respondent collected the claimant from work every day. On the morning of the 1<sup>st</sup> of December 2008 the respondent called the claimant to his car and told him '*we have to finish our contract.*' The respondent told the claimant, '*we have to stop working together, I don't need people like you.*' The claimant had been arrested two days previous to this and believes this is why he was dismissed. After informing the claimant he would no longer be working, the respondent requested that the claimant collect his P45 and any other documentation at the office.

The next day the claimant went to the office to collect his P45. The respondent's wife handed the claimant documents to be signed in English. The claimant signed the documents without understanding the meaning of the documents. The resignation letter unknowingly signed by the claimant was submitted to the Tribunal. The second document produced to the Tribunal is a statement signed by the claimant stating that the respondent '*treated me fairly.*' The claimant got the letters translated a few weeks later and was shocked to see it said he resigned as opposed to being 'sacked.' The day the claimant signed these documents he was also given 2 weeks holiday pay.

The claimant did not have a Contract of Employment. The claimant thought the letters he signed concerned the holiday pay the respondent had just given him.

### **Respondent's Case**

The respondent received a phone call from the claimant's girlfriend requesting the respondent's help as the claimant had been arrested. The respondent retrieved the claimant's passport for the Gardaí the next day and secured the claimant's release. The following day the 2<sup>nd</sup> of December the respondent went to pick the claimant up for work. The claimant informed the respondent that 'I can't work for you anymore' the respondent said 'that's your decision' and asked him to come to the office to collect his documents. The claimant collected his P45 and documents from the respondent's wife.

The respondent was present when his wife read out and explained the letters to the claimant. It is policy with the respondent to request people to sign these letters when they leave. The respondent is not aware of why the letter 'apologising for not giving notice' is both addressed to and signed by the claimant. The claimant knew he could not longer work for the respondent considering he had been arrested. The claimant requested the letters resigning and apologising for not giving notice, to be prepared for him.

The respondent's wife was informed the claimant had resigned on Tuesday and informed the respondent that they would have to get him to sign a letter to that effect. The respondent's wife informed the claimant what each letter contained and he said 'no problem and signed them. The respondent's wife gave the claimant his P45, there was no further contact with the claimant. The claimant did not ask the respondent's wife to prepare the letters. All the letters were dated the 2<sup>nd</sup> of December 2008, as that was his end date.

### **Determination**

The respondent employed the claimant as a joiner. His employment began in June 2006 and ended in December 2008. The claimant alleges that he was dismissed. The respondent alleges that the claimant resigned his employment.

The claimant told the Tribunal that he was usually collected for work in the morning by his employer. On the morning of the 1<sup>st</sup> December 2008 he was waiting to be collected. When his employer, PK, arrived he was told that he had to finish work and that people like him were not needed. He told the Tribunal that he had been arrested two days previously and that he believed that that fact had something to do with his dismissal.

PK told the Tribunal that after the claimant had been arrested, his girlfriend telephoned and asked him to assist. He went to the Garda Station. He said that on the following Tuesday morning the claimant, embarrassed about his arrest, resigned his employment saying that he could not work for PK anymore. PK accepted that he had been disgusted by the claimant's behaviour but not so disgusted as to dismiss him.

The claimant told the Tribunal that after having been dismissed he was brought to the office and asked to sign a document. He said that he did not understand the document but that he nevertheless signed it. The document purported to be an acknowledgement of a letter of resignation and was

signed both by PK and by the claimant. PK told the Tribunal that this was the procedure adopted by the respondent whenever any employee resigned. PK's wife, AK, drew up the letters to be signed. There was a contradiction between their evidence as to when this was done. PK told the Tribunal that it was written in the claimant's presence. AK said that they had been prepared in advance.

The Tribunal is satisfied, on the balance of probabilities, that the claimant was dismissed. The Tribunal, given the significant contradiction in the evidence given by the respondent's witnesses, prefers the claimant's evidence. Further, given that the claimant was ready for work on the morning that he was dismissed does not suggest that he was ready to resign.

No evidence was adduced to rebut the presumption of unfair dismissal. In the circumstances, in respect of his claim under the Unfair Dismissals Acts, 1977 to 2007, the claimant is awarded compensation in the amount of €8,000.00 as being just and equitable in the circumstances. Accordingly, his claim under the Redundancy Payments Acts, 1967 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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