

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD941/2009
MN967/2009

Against

EMPLOYER
EMPLOYER

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr J. Hennessy
Mr T. Kelly

heard this claim at Clonmel on 9th March 2010

Representation:

Claimant: Ms. Marie Corcoran, Human Resources Consultant, Gemini Solutions, 51 Gladstone Street, Clonmel, Co. Tipperary

Respondent: In Person

The determination of the Tribunal was as follows:-

Background

The respondent operates a greyhound stud and kennels with responsibility for the upkeep and maintenance of greyhounds.

Respondent's Case

During direct evidence the respondent, SB, told the Tribunal that the claimant commenced employment with the company in 2005. The claimant started worked with the respondent on a part time basis. He was responsible for taking in bitches, feeding pups, cleaning yards, and general work. He said they only used the claimant for a couple of hours in the mornings. He would disappear for a while. At the start of his employment with the respondent he would have worked on Sundays but this did not continue because he would be in the pub on a Saturday night. He would have worked bank holidays to cover for the Sundays.

The respondent told the Tribunal that the claimant was very punctual. He knew what his general duties were and he would get upset if the respondent asked him to do anything that was out of his routine. The respondent told the Tribunal that during the claimant's employment with the company a number of unsatisfactory incidents had occurred.

Around October/November 2008 the claimant was assisting the respondent, who was taking bloods from a bitch. The bitch got a bit agitated and the claimant got rough with her. As a result of this the respondent told the claimant that for the sake of the business and the greyhounds to go home for the rest of the day. The respondent told the Tribunal that he felt the claimant was not suitable for the job but he did not want to dismiss him because he had never dismissed an employee before.

Another incident involving the claimant had occurred in the middle of December 2007 when the claimant went missing from the employment for a period of 2 to 3 weeks. The respondent said that the claimant just disappeared a week or 10 days before the Christmas period in 2007 and when he returned he told the respondent that he needed time off because he was depressed. He did not provide the respondent with a doctor's certificate. The respondent said the claimant told him that was on medication for depression.

The incident that resulted in the termination of the claimant's employment took place on 27th November 2008. The respondent explained that there was a private roadway on the property that was used by the postman and family etc. Situated on one side of this roadway is a gate into a pen. On the day the claimant's employment ended the respondent was in this pen carrying out duties. There was a pup in the pen at the time and it got away from the respondent and out through the gateway which led onto the roadway. The respondent shouted at the claimant to catch the pup. The claimant just let the pup pass him and told the respondent to "catch him your f**king self". The respondent went to run at the pup himself and the claimant threw a dish at him. The claimant came up to the respondent and would not let him pass. The respondent said the claimant looked as if he was going to throw a punch at him. The claimant told the respondent "I'm getting out of this f**king place". The respondent presumed that he would be back the next day but the claimant did not return.

The respondent told the Tribunal that the claimant was not dismissed because he walked out himself and did not provide the respondent with the required one week's notice.

At this stage of the hearing the Tribunal noted that there was a conflict of evidence in relation to the termination of employment. Dismissal as a fact was in dispute and ideally the claimant should have presented his evidence first.

Cross Examination

During cross examination the respondent agreed that as an employer he had obligations to his employees under the law and was aware of these obligations. When asked if he provided the claimant with notice as required under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 the respondent said that he had not dismissed the claimant and therefore did not provide him with notice.

The respondent explained that at 9pm on Saturday evenings they would complete the "turn outs". On Saturday nights the claimant would never arrive later than 8pm because he went drinking on Saturday nights. The respondent agreed that for this reason he did not ask the claimant to work on Sundays and the claimant did not refuse to work Sundays.

The respondent told the Tribunal that on the 27th November 2008, when the incident occurred, he may have used abusive language in response to the claimant's behaviour but he did not agree that he had told the claimant to "get the f**k out of here".

The respondent agreed that a P45 issued to the claimant on 2nd December 2008. He explained that he had no contact or dealings with the claimant since the 27th November 2008. He confirmed that, even though the claimant absented himself from work, in December 2007 a P45 did not issue to the claimant. However, after the incident on 27th November the respondent instructed his wife that the claimant had walked out and therefore a P45 issued to the claimant five days later.

The respondent confirmed that there is no disciplinary or grievance procedure in place within the company.

The Tribunal heard evidence from the respondent's wife, AB, who told the Tribunal that on the 27th November 2008 the respondent told her that the claimant had walked out. In December 2007 the claimant had been absent for approximately one week. She contacted the claimant to enquire about his return to work and he informed her that he was quite sick. She enquired if he would be back to work before Christmas to which he replied in the negative. He returned to work in January 2008.

Cross Examination

During cross examination, AB confirmed that she did not contact the claimant prior to issuing his P45.

Claimant's Case

The claimant commenced employment with the respondent on 28th February 2005. During direct evidence the claimant told the Tribunal that he commenced employment as a full time employee responsible for general maintenance. He got the job through an employment agency. The claimant had previous experience working with greyhounds. At the time of termination of his employment with the respondent, his hours of work were 7am – 9am and then sometime in the evening.

The claimant told the Tribunal that it was part of his job to feed the pups. On 27th November 2008 there were two pups locked in a pen separately because they were injured. The respondent went in to feed them and left the gate open. As a result, the pups got out and ran down the roadway. The respondent told the claimant to go after the pups and the claimant said you go after them. The respondent then told the claimant you'll never speak to me like that again.

A few weeks before this incident the claimant had brought a bitch in to a pen to take bloods. She got nervous and soiled the floor. The claimant locked the bitch in so that he could clean up. The claimant said he was told in an abusive manner to take the dog away and clean up. The claimant said he was not told to go home. The claimant told the Tribunal that there had been an incident with a hose reel and the respondent abusively told him he was doing it wrong. The claimant told the Tribunal that the respondent spoke to all employees in this manner.

The claimant said he had a good relationship with the respondent but the respondent never spoke to him about his suitability for the work or his attendance. He also explained that he had never been subject to any disciplinary procedures or sanctions.

The claimant told the Tribunal that during his employment he never absented himself from work.

There had been one period in Nov-Dec 2007 when he encountered a family problem and the respondent's wife, AB, offered him a week off, which he accepted.

On the day of the termination of his employment the claimant said there had been an altercation with the respondent and the respondent asked him "are you going to hit me?". He also told the claimant to "get the f**k out of here and not come back again". There was a shed in which the claimant stored his wet gear in and when he went to get his wet gear the respondent told him to "get the f**k out of here"

The claimant told the Tribunal that he was dismissed in no uncertain terms. He did not receive any warnings or notice of dismissal.

Cross Examination

During cross examination the claimant confirmed that on the day of the incident the pups were locked behind a gate, halfway down the roadway and the respondent let them out.

The claimant confirmed that the period of absence referred to in 2007 was one week and that he was available for work over the Christmas period.

The claimant described the area with the pens to the Tribunal – there was a driveway with a gateway on the left side. There were different gates inside to make small runs and big runs. The outside gate on the driveway was left open and the pup got out through the two gateways. The claimant stated that the respondent was the last person through the gate and therefore he left the gate open.

Determination

Having considered all of the conflicting evidence and the incident, which occurred in November 2008, the Tribunal interprets the words used by the respondent as a means of dismissal.

By taking into account all of the evidence presented at the hearing, including the applicant's lack of experience in relation to dogs, and the poisoned relationship between the parties, the unfairness of the dismissal is attenuated and fair procedures were not observed. Therefore, the Tribunal awards the claimant €6,000 compensation under the Unfair Dismissals Acts 1977 to 2007.

The Tribunal finds that the claimant is entitled to an award of €420 being the equivalent of two weeks pay under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)