

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE  
WT666/2009  
Against

UD1568/2009

EMPLOYER  
Under

### ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L  
Members: Mr. J. O'Neill  
Mr. S. O'Donnell

heard this claim at Dublin on 29th June 2010

#### **Representation:**

Claimant: Mr Damian Reilly, McKeever Rowan, Solicitors, 5 Harbourmaster Place, IFSC,  
Dublin 1

Respondent: Mr. Stephen Sands, Construction Industry Federation, Construction House,  
Canal Road, Dublin 6

The determination of the Tribunal was as follows:-

#### **Claimant's case**

The claimant stated that he commenced employment with the respondent on 26<sup>th</sup> May 2002. Initially he worked as a scaffolder but was later promoted to foreman. On Sunday 4<sup>th</sup> January 2009 the claimant fell from a lorry and injured his back while working for his brother close to his home in Strabane, Northern Ireland. He worked for the respondent from Monday to Friday every week and was based in Dublin. On the day of the accident he attended a hospital in Northern Ireland. According to the claimant hospitals in Northern Ireland do not issue sick certs and if one is required it must be obtained from a G.P. Therefore the claimant obtained a cert from his G.P. and gave it to the General Foreman. Subsequently the claimant was unable to attend work for a further week and sent another cert to the office. The General Foreman told the claimant that a final cert was required and this was given to him in person on 16<sup>th</sup> January 2009.

It was alleged that the General Foreman then asked the claimant to resign, as he believed that the claimant and the claimant's brother had opened a business in Northern Ireland. When the claimant refused to resign he was told that he was suspended for two weeks until further notice. Another meeting took place about a week later. At this meeting the respondent allegedly said that he was not happy with the sick cert and that the Doctor was lying and that he wanted a letter from the hospital. The suspension was not lifted and the claimant was not paid wages. The claimant stated that he was never allowed back to work nor was he given anything to say when he could return to work.

The solicitor for the claimant sent a letter dated 2<sup>nd</sup> March 2009 to the respondent outlining the claimant's position with regard to his alleged suspension from work and calling on the respondent to undertake certain

actions. However no reply was received to this letter. The solicitor for the claimant gave evidence that he had contacted the hospital and could only obtain confirmation that the claimant had attended the hospital on the 4<sup>th</sup> January 2009.

### **Respondent's case**

The respondent confirmed that medical certificates certifying the claimant unfit to work had been received for the period from 5<sup>th</sup> January 2009 to 18<sup>th</sup> January. The claimant was certified fit to return to work on 19<sup>th</sup> January 2009. However the respondent requested a medical/accident report on the claimant's injury before he would be allowed to return to work. The reason the respondent requested this was two fold. Firstly they wanted to be sure that there were no health and safety concerns going forward and secondly they wanted to know the circumstances of the accident.

The respondent was also concerned that the claimant had started his own business. However they denied that the General Foreman had suspended the claimant after he refused to resign and said that he (the General Foreman) would not have the authority to do so.

The respondent confirmed receipt of a letter dated 2<sup>nd</sup> March 2009 from the solicitor for the claimant. However he did not reply to this letter because he held that the claimant was well aware of the situation.

### **Determination**

The Tribunal finds that as a matter of fact the claimant was dismissed by the respondent from 6<sup>th</sup> March 2009 being the approximate date of receipt of letter from the solicitor for the claimant to which the respondent failed to reply. The Tribunal also finds that the dismissal was unfair because the employer failed to invoke any or any proper procedure in respect of that dismissal. Furthermore the Tribunal finds that the respondent failed to discharge the onus of proof required under the act to justify such dismissal.

The Tribunal deems that the most appropriate remedy in this case is compensation being the preference of both parties. The Tribunal awards the claimant €30,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

The claim under the Organisation Of Working Time Act, 1997 fails as no evidence was adduced in respect of such a claim.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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