

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

- claimant

MN1593/09

UD1622/09

against

EMPLOYER

- respondent

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: Ms O. Madden B.L.

Members: Mr. A. O'Mara
Mr C. Ryan

heard this claim at Dublin on 30th August 2010.

Representation:

Claimant: Mr Krystian Boino, J C Hoban & Company, Solicitors, Suite
114 The Capel Building, Mary's Abbey, Dublin 7

Respondent: Ms. Suzanne White, "Casa Mia", Mount Gorry, Malahide Road,
Swords, Co Dublin

The determination of the Tribunal was as follows:-

Respondent's Case:

The respondent is a provider of conservatories and sunrooms. All employees are provided with contracts of employment and terms and conditions of employment. In March 2009 employees were put on a three-day week. For the days they did not work they were able to claim social welfare payments. When Director T McE offered the employees an extra day's work on occasion they refused it. The company had three vans and employees were permitted to take these home after work.

On 22nd May 2009 an employee G approached T McE with concerns that his job may be in jeopardy as he was aware that three employees were doing nixers. Two brothers and the claimant were named. T McE thought long and hard about this over the weekend and on Monday, 25th May

2009 he put the allegation to all three employees and they denied doing the mixers. However, the two brothers admitted taking tools and offered to pay the respondent for them and he accepted payment. He suspended them with pay that day as he wished to investigate further and get to the root of the problem. He checked through quotations he had given to customers.

The following day, Tuesday, 26th May 2009 both T McE and his co director C McE travelled to visit various locations for which they had given quotations. When they arrived at a house in Rathfarnham they were flabbergasted and stunned to see the company van outside and the three employees working there illicitly. The company had previously given the home owner a quotation for work on the house. T Mc E took photos. The employees were using the company's tools and a mixer. Y McE approached the home owner who told him that about three to four weeks previously two employees from the company had visited her and said that they could do the job as a mixer. The home owner said she regretted going ahead with the job. He subsequently spoke to the employees and said he could not have them working for him, as the trust was broken. He threatened to call the Gardai but did not but told them there were no longer jobs for them in the company. He took a wheelbarrow and a mixer, which belonged to the company but did not take the materials being used on the job, as he could not prove they belonged to the company.

T McE said the company was a small family business which was struggling to stay in business due to the downturn in the economy. He had an open office and employees often had to access the office to check details on quotations/invoices.

C McE, a company director, also gave evidence. He corroborated the evidence of T McE and said that he and T McE removed the tools and cement mixer and drove the van home that day.

Claimant's Case:

The claimant commenced employment on 18th April 2006. Several months prior to the termination of his employment he was working a three-day week. On 25th May 2009 he commenced work at 8.30 am. At approximately 10.00 am one of the bosses spoke to his colleague V for about one hour. V passed a message to him that he was no longer working for the company. He asked one of the Directors, R, for the reason but received no explanation. The claimant returned his company phone and the key to the company's gate and went home. He was angry.

As far as the claimant was concerned he no longer worked for the company. At approximately 4 pm his fellow employee V asked him if he could help him and his brother M out on a job the following day, Tuesday, 26th May 2009. V had done him a favour in the past and he agreed to return the favour the next day. They needed help on block work. He said it was not a problem and to ring him later with details of the location. He agreed to go to the house and help V and M with the work.

On Tuesday, 26th May 2009 the claimant travelled by car to the house in Rathfarnham. V and M told him that they had an arrangement with the company to borrow the wheelbarrow and the mixer. He thought the two travelled by bus to the house but was unsure. He had never worked with them prior to that and never stole any items from the company. He witnessed C McE speaking to M and C McE taking the mixer away. He remained working with V and M.

The claimant told the Tribunal that he had never had sight of the company's disciplinary procedures prior to hearing. He did not appeal the decision to dismiss him.

He received his P45 about one week later. He has been in receipt of social welfare payments since the termination of his employment. He has participated in training courses and secured certificates.

He has not secured work since the termination of his employment.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. It is clear that there is a conflict of evidence between the parties. The Tribunal prefers the evidence of the respondent. While the respondent did not adhere to proper procedures following its investigation, the claimant did not avail of the opportunity to appeal the decision to dismiss him. The Tribunal is satisfied that while the claimant was suspended from work he was involved in unauthorised work of a customer of the company.

The Tribunal is satisfied that the claimant was not unfairly dismissed and that there were reasonable grounds for the dismissal.

The claims under the Unfair Dismissals Acts, 1977 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)