

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

claimant

UD1841/2009

MN1748/2009

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: Mr. P. O'Leary B L

Members: Mr. D. Winston
Ms M. Finnerty

heard this claim at Dublin on 2nd November 2010

Representation:

Claimant(s): Mr. Edward McGarr, McGarr, Solicitors, 12 City Gate, Lower
Bridge Street, Dublin 8

Respondent(s): Mr Barry O Donoghue, Ferrys Solicitors, 15 Upper Ormond
Quay, Dublin 7

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant told the Tribunal that he commenced employment with the respondent in January 2007. He cleaned windows in apartment blocks and commercial buildings. It was the respondent's idea that the claimant would establish a domestic window cleaning business, which he would manage, and the respondent would give him some money towards a van. After a couple of weeks the plan was that the respondent would give the claimant his contracts and he would operate the business for him. He discussed buying a van with the respondent and he was okay with this. He had his own logo on his van since March 2009, he drove it to work and then went to the respondent's van. His hours of work were from 7a.m. until 3p.m. He did a leaflet drop to advertise his business and he undertook a few window cleaning jobs in the evening.

On 16 March 2009 he went to work, he drove his van into the yard and parked it in the drive. The

respondent wanted to know if he worked for the respondent or for himself. If he did not give up his own work he could not work for him. He wanted to continue working for the respondent in the mornings and work for himself in the evenings. On 16 March 2009 he felt that he was going to be dismissed. He was trying to establish a domestic business; the respondent implied that he was trying to take customers from him. He told the respondent that he did not have proof that he had ever taken his customers. The respondent told the claimant that he had lost a piece of equipment, which he later found. He left the respondent on 16 March 2009.

In cross-examination he stated that the respondent was a friend of his father for years. He initially worked with the respondent during the summer. He then undertook an apprenticeship in carpentry for three to four months, the carpenter did not register him and he was let go. The plan was that the respondent would assign him work, pay him a percentage, the respondent would step back and the claimant would run the window cleaning part of the business. The respondent told him that this would commence after two years and he then mentioned five years. He could not recall taking time off from work in January 2009 and he undertook work on the respondent's house in Athlone in January 2009. He gave the respondent the keys on 16 March 2009 and he left. He telephoned the respondent the following week and the respondent told him it was best if he did not return to work. The respondent asked him to telephone him the following week, the claimant telephoned him and did not get a response. The claimant then informed the respondent by text message that he was getting legal advice. He spent a considerable amount of money in establishing his own business. He felt that the respondent had given him an ultimatum and he was not giving up his own business.

In answer to questions from the Tribunal he stated that he still has a cleaning business. When asked in relation to his low earnings from the business he replied that he had to buy supplies and he had a considerable amount of expenses.

Respondent's Case

The respondent told the Tribunal that he had a cleaning business and undertook work on cleaning apartment buildings; commercial buildings and he also undertook janitorial work. The business had expanded in the past six years and he employed seventeen to eighteen employees. The claimant's father was a good friend of his. The claimant initially worked a summer with him, he wanted to be a carpenter, and he commenced an apprenticeship. Before the end of the year the claimant's father contacted him and the claimant became an employee. He did not have a discussion with the claimant regarding him taking over the business. He told the claimant if he brought in work that he would subcontract the work to him and rent a van to him. The claimant did not bring in business. The claimant purchased a van and the quality of the equipment he purchased was not good. The respondent did not undertake domestic work.

Health and Safety training was a big issue for the respondent and in November 2008 he arranged training for the claimant. The respondent had a hoist with a fifty-metre boom, the biggest in the country, the claimant received training on this. The claimant worked New Year's Eve and he took time off after the New Year. In January 2009 while the respondent was on holidays he received a call from the claimant that he could not work due to bad weather. He told the claimant to take four days off and he could work these days on Saturdays. Staff worked a half-day on Saturdays. January through March was a slack time and he was renovating a house in Athlone. March, April and May were very busy months

In mid March 2009 the claimant drove his own van to a building where the respondent undertook work. He did not ask the respondent's permission to do this. The claimant used a power washer

from his own van and the respondent told him he could not do that, as it was not the proper equipment to use. He spoke to the claimant on 16 March 2009 about leaving work early and in relation to equipment that the claimant had lost. He asked the claimant if he was going to work for the respondent or work for himself. The claimant then walked to his van and left. The claimant told him he was not giving up what he had. The claimant was not dismissed

In cross-examination he stated that if he had a problem with employees he had a quite word with them. He did not suggest that the claimant had resigned.

Determination

The Tribunal having considered the evidence in this case prefer the version of events given by the employer in his evidence and find the claimant voluntarily left his employment. His case under the Unfair Dismissals Acts, 1977 to 2007 fails. The claimant is not entitled to minimum notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)