

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE – *claimant*

CASE NO.
UD1411/2009
MN1388/2009
WT607/2009

against

EMPLOYER - *respondent*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M O'Connell BL

Members: Mr M Murphy
Mr T Brady

heard this claim at Dublin on 1st July 2010 and 29th October 2010

Representation:

Claimant(s) : Ms Aoife Carroll BL, instructed by:
Mr Eoghan McKenna
Michael Campion & Co Solicitors
Kreston House, Arran Court, Smithfield, Dublin 7

Respondent(s) : Mr Michael McGrath
IBEC
Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant gave evidence through an interpreter that he commenced working for the respondent company, a car hire company, on 8 February 2008. He was responsible for the maintenance of the cars and the car park area. He also transported cars to various locations for customers. He was employed on a full-time basis but did not receive a contract of employment from his employer. He was never given a copy of the company's grievance procedures. In April 2009 he spoke with RK from the company and requested permission to take unpaid holidays. RK gave him permission to take holidays from 4 April 2009. He informed RK that he would be returning to work on 20 April

2009.

He returned from his holidays on 20 April 2009 and was informed by RK that he was dismissed due to being absent from work for more than a 7-day period. He did not attempt to get RK to change her mind. He requested his P45 but it was not provided to him until his legal representative contacted the company. He contended that he did not refuse to attend a meeting with the company. His name was not on the roster to work after 20 April 2009. He received a letter from the company which inter alia informed him that his position was still open to him and they would welcome his return to work. He did not believe the offer in the letter as he did not believe that the company's intentions were good.

He gave further evidence that he worked 22 hours per week on commencing his employment. This increased to more than 52 hours per week with overtime including Saturday and Sunday work. After March 2009 his hours were reduced. He only received two payments for Public Holidays over a one-year period of work. He told the Tribunal that his boss hereafter known as BL did not treat him very well. BL called him an idiot on two occasions. He was banned from entering the office where customers were located and was made to wait outside even if it was snowing or raining. His working conditions were dirty and he had to use his own vacuum cleaner, sponges and cloths to clean his work area.

Since he finished working for the respondent he has not been in paid employment. He has applied for numerous positions and has also registered with FÁS.

The cross-examination of the claimant commenced on the second day of hearing. He agreed that he had previously requested leave in writing. His wife wrote the requests for him. He accepted the four examples of this provided by the respondent company including an application for a two-hour dental appointment.

The claimant contended that the interpreter on the first day of hearing did not translate correctly. The Tribunal did not accept this and was satisfied with the evidence recorded on the first day of hearing.

The claimant contended that he asked RK for two weeks' leave, for the following two weeks, at approximately 10 or 11pm on Friday 3rd April 2009, while he was driving back from the airport. He then said that he was only confirming that he was taking the time off and that he had already requested the time previously, but he couldn't say when.

He believed his problems stemmed from when he wrote a letter seeking to discuss the difficulties he was having with his work. He agreed that on Friday 3rd April 2009 RK had said she would meet him about his concerns, but she had not said she would meet him the following week, she said she would meet him before she went on her holidays.

He believed that he saw the roster for the following week and his name was not on it. He was shown a copy of the rosters for the following two weeks, which had his name on them and marked 'no show' beside it. He did not know why RK would put his name on the roster after having granted him two weeks' leave. He contended that no one from the company had phoned him while he was on leave and he had not phoned them.

On his return to work on April 20th 2009 RK told him that his contract was finished and shook his hand. He couldn't recall if RK had asked for a meeting with his wife present so that she

ould translate. He disputed that he had refused to bring his wife. He contended that the letter he sent to the company on April 20th 2009, drafted for him by his wife, might not have been correct, as sometimes his wife could not put down 100% of what was in his head. He disputed that his intention was to be dismissed. The company only wrote to him after he engaged a solicitor at the end of April or early May 2009.

Determination:

The Tribunal on hearing the evidence and cross-examination of the claimant believes that the claimant has failed to prove that a dismissal took place in this case. The Tribunal believes that the claimant decided to leave the respondent company's employment at some stage at the start of April 2009.

The Tribunal does not accept the claimant's assertion that he was told his contract was being terminated. The Tribunal believes that the respondent through correspondence honestly endeavoured to clarify any confusion which had arisen. Despite several offers to return to work the claimant for reasons best known to himself declined.

Accordingly, the claims under the Minimum Notice and Terms of Employment Acts and Unfair Dismissals Acts, 1977 to 2007, fail. As insufficient evidence was given in relation to the Organisation of Working Time Act this claim also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)