

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

- claimant

UD2557/09

Against

EMPLOYER

- respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr B. Kealy
Mr. J. Flannery

heard this appeal at Naas on 4th January 2011.

Representation:

Claimant: In person

Respondent: Mr. Patrick Reidy, Reidy Stafford, Solicitors, Market Square, Kilcullen, Co. Kildare

heard this claim at Naas on 4th January 2011.

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant was employed as a driver. He had previously worked in another company in the same capacity. His hours of work were unsocial. His net pay in that job was €800 per week. He had previously worked with KJ the owner of the respondent company and agreed to work for him on the same salary. He commenced employment on 14th May 2007. In the first year of employment everything was going well.

The respondent (KJ) had a contract with a company A. The claimant took most of his instructions from company A as to his workload for each day. This company was based in Portlaoise. He worked on a wheelie bin truck, left home at 2 am each day, commenced work at 3 am and finished around 9.30 pm. He was only getting 3 to 4 hours sleep each night. He felt no better off than he had been in his previous job. He found it very hard but worked without complaint. He received a

letter on 27th March 2009 from KJ stating that each driver had to take a pay reduction of €100 per week and a requirement to work one Saturday per month for no extra charge. The following Monday he told KJ he would not accept the reduction. The claimant contended that he did not believe other employees' wages were being reduced. When he spoke to these employees they were all hesitant and no one seemed to know what he was talking about. His hours were all over the place and he deemed them to be barbaric. He spoke to KJ each morning and the end of each day. He complained to his manager that he could no longer work these long hours and refused to drive the lorry. He needed someone to replace him and he would work on a different truck. He was qualified to drive all of the trucks owned by the respondent. He received a written warning from the respondent on 29th June 2009 following his refusal to drive the truck.

On 12th August 2009 he was feeling unwell but told KJ he had intended coming into work later. He reported for work later on that morning. He received abuse over the phone.

On 13th August 2009 he went to work. He needed to know his workload for the day. KJ was in a truck and GC was beside him. He got up on KJ's truck and spoke to him. He needed to know who his supervisor was and enquired about getting paid for the Monday he was told he had not to work. KJ got down out of the truck and came face to face with him. He was waiting for KJ to punch him. Abusive language ensued between himself and KJ. The claimant felt very threatened and very intimidated.

By letter dated 17th August 2009 he was formally dismissed. He was given two weeks notice.

He was not furnished with pay slips until he took a complaint to the Rights Commissioner. His wages on those slips varied.

The claimant contended that he was a hard worker. He has not secured work since the termination of his employment but has been in receipt of social welfare benefit.

Respondent's Case:

The respondent (KJ) is a sole trader. He is an independent contractor, engaged in collecting bins and delivering skips for company A (a subsidiary of Bord Na Mona). During the claimant's tenure KJ employed five drivers, the claimant being one such driver. The claimant earned €800.00 net per week.

Due to the economic downturn in January 2009 company A reduced their price per bin from €100.00 to €85.00. KJ informed all employees of this reduction. A further 20% reduction per bin occurred in March 2009. This resulted in KJ being paid €65.00 per bin.

KJ wrote to all employees at the end of March 2009 informing them that they would have to take a pay reduction of €100.00 per week. In addition each employee would have to work one Saturday per month for no extra wage. The claimant was unhappy with this reduction and said he could not do this and that he would be fighting his case.

KJ wrote to the claimant on 9th April 2009 advising him that he was taking him off the curtain sider truck and told him he was to go back driving a hook lift lorry instead. The claimant was not initially willing to go back to driving the hook lift lorry but did. His performance had reduced somewhat and the claimant said he was getting help up at places.

When he tried telephoning the claimant he would not get a response for about two hours. He gave out to the claimant for not answering his telephone but he did not seem bothered.

He furnished the claimant with a written warning on 29th June 2009 for his refusal to drive a lorry allocated to him. He did not do anything further about the matter and let it fester. The relationship between them was strained.

The claimant arrived late for work on the morning of 12th August 2009. KJ made numerous attempts to contact him. As he needed the keys for the lorry urgently. He eventually made contact with him and the claimant told him where the keys were. He arrived at work later that morning. He tried to hand a second written warning letter to the claimant the next day but he put his hands behind his back and said he was not accepting the letter. An argument ensued. The claimant said if KJ raised his voice again it would be the last thing he would do.

He formally dismissed the claimant by letter dated 17th August 2009 and give him two weeks notice.

Determination:

The Tribunal has carefully considered the evidence adduced before it.

The claimant believes that he was unfairly dismissed when he was written to by the respondent in the aftermath of an unpleasant and heated row which, it is accepted by both parties took place in the workplace on or about 13th August 2009. The claimant had already been given at least one letter of warning on 29th June 2009 arising out of a perceived refusal to carry out the respondent's instructions.

What is clear to the Tribunal is that there was a complete breakdown in the relationship between the two parties, which was unfortunate where these exact two people had started up the business together back in 2007. There does not seem to have been any formal internal grievance policy, which might have been activated, to deal with the long hours of which the employee complained and it is clear that the respondent lacked management skills and allowed the breakdown between the parties to "fester" to use his words.

The fact that the respondent felt obliged to reduce wages comes as no surprise to the Tribunal in these economic times. However, the failure to discuss such a change with staff demonstrates a complete lack of understanding that a two-way discussion forum must operate in a successful workplace. The claimant felt obliged to challenge the reduction in his wages and did not discuss it with his employer but went straight to the Rights Commissioner, as is his entitlement.

The Tribunal cannot conclusively say whether there was a threat of violence during the course of the row in August 2009 but the row was simply the final blow to a relationship gone awry.

The respondent used the opportunity to justify a dismissal but the Tribunal does not accept that this decision was fair in all the circumstances.

Given the relationship between the parties as confirmed by the oral evidence the Tribunal does find that the claimant contributed to his own dismissal by failing to take direction and by repeatedly challenging his employer's authority.

In the circumstances, the Tribunal finds that the claimant was unfairly dismissed and awards him €11,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)