

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

- claimant

CASE NO.
RP441/2010
UD216/2010
MN208/2010

against

EMPLOYER

- respondent

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr. W. O'Carroll
Mr T. Kelly

heard this claim at Ennis on 13th September 2010

Representation:

Claimant(s) : Mr Gearoid Howard, Crimmins Howard, Solicitors, Dolmen House, Shannon,
Co Clare

Respondent(s) : Ms. Sharon Curley, Carmody & Company, Solicitors, Peach House, Shannon,
Co Clare

The determination of the Tribunal was as follows:-

The claims under the Redundancy Payments Acts, 1967 to 2007 and the Organisation of Working Time Act, 1997 were withdrawn.

Respondent's Case:

The owner of the respondent business gave evidence. He was contracted to a fabrication firm for 18 years and had employed 2 staff. The claimant was employed as a machine operator and the witness had trained him in the business and kept "an eye over his shoulder" for some time to make sure he was carrying out the job properly.

After about a year problems began to arise with the claimant's dealings and attitude with the witness and his client. He dealt with it verbally by giving him warnings. There was no written record of them. The issues concerned raw materials being used for personal use without permission of which he received a warning from the Financial Controller of the fabrication firm (hereafter known as MD) and the witness.

A second incident concerning some of the client's stainless steel to the value of € 150 missing. He spoke to the claimant with the help of a work colleague as the claimant was a Ukrainian National and sometimes, he felt, the claimant did not understand him. When questioned the claimant's reaction was to walk away and repeatedly punch a superstore catalogue.

A third incident around October 2009 he found on his arrival to work that the claimant had not carried out some work and he questioned him on it. The claimant would not communicate, punch his fist against his other hand and walked away.

The final incident occurred on December 7th 2009 when the claimant had produced defective of material. The following morning he found that the claimant was still producing defective material. The cost of this material that had to be scrapped was to the value of € 2,250 the witness had to repay to MD which took him some months to repay. He told the claimant to stop working and check the tools to fix the problem. He impolitely replied no. He told him to leave the premises to consider what happened. The witness considered the matter and felt he had no alternative but to let the claimant go and informed him of this. He sent his P45 and any monies owed to him through the colleague who had earlier interpreted for the witness to the claimant.

On cross-examination he stated there was no written code of practice, no grievance or disciplinary procedure and the claimant did not have a written contract of employment. He stated it was just "common sense" what the code of practice was. There had been another incident concerning "page 3" pictures being on display inside a cabinet. The MD had found out the claimant had put them up and said they were to be taken down as a group of people were visiting the premises and any female present would find them offensive. MD also spoke to him about the claimant's attitude and behaviour in the workplace and asked him to speak to him about it. When asked he stated that he had paid for half of the claimant's work permit.

MD gave evidence. He stated that they had used other contractors in the past and they knew they were required to abide by the company's rules and regulations. There were signs displayed concerning this and health and safety. He stated that the company he was employed by were very strict about materials being used for personal use without prior permission, as it is the company's property. He also stated that the company had to be very aware that good quality materials were delivered to their clients or they could lose the contract.

On cross-examination the claimant's representative told the witness that the claimant had conceded that he had produced some defective materials.

Claimant's Case:

The claimant gave evidence. He admitted he had poor English. He approached the respondent for a position and told him he would require a work permit, the respondent applied for it and the claimant re-paid him half the cost, i.e. € 2,000.

He admitted he had received one warning in the past for using materials without permission and had never used materials without permission after that. He had also been warned for making defective materials and was told if he did it again the cost would be deducted from his wages. He had never stolen any materials but had agreed to making some defective materials. In respect of one alleged incident when he had used some scrap metal to make an item for himself the respondent had told him what drill to use.

He stated that he had never been aggressive to anyone, it was the respondent who was aggressive and had sworn at him. The respondent had lost his temper one day after returning from the Christmas holidays as there was little work for them to carry out. He said he had to fire the

claimant's colleague but apologised for his behaviour later in the day. This colleague was later rehired when they had more work but at a lower rate to the claimant. He also now worked longer hours than the claimant and the previous promise of overtime for the claimant never occurred. When he brought up the subject with the respondent he told him he was costing him money. After that day the respondent stopped talking to him. He stated that on his last day the respondent had screamed in his face.

On cross-examination he stated he was not aware MD wanted the "page 3" pictures removed and they had been put up in a closed cabinet. When asked if he had punched the superstore catalogue he replied that he had done it to keep in "physical form". He agreed he had made defective materials on the day before his dismissal.

A former staff member of the respondent's client gave evidence. He had left his employment in February 2006 and had not worked with the claimant but had worked beside the respondent. He said that he had witnessed the respondent throw a hammer in his direction but not at him. He said the respondent was a very aggressive person.

Determination:

The claimant had no contract of employment. There were also no proper procedures in place, no handbook and no disciplinary procedures. The respondent acted in a manner which could be said to be aggravated. In view of the fact the claimant was a foreign national who not be expected to easily understand written formal terms of employment or written material which could have an effect on his employment.

The Tribunal finds that the claimant was given no written warnings and what warnings were given verbally were given in a way that it did not clearly specify as to what way the claimant's behaviour was expected to improve or to change.

In all the circumstances the Tribunal finds that the claimant was unfairly dismissed and awards the sum of € 11,440 under the Unfair Dismissals Acts, 1977 to 2007.

Loss having been established the Tribunal awards the sum of € 1,144.00, the being two weeks gross pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)