

## EMPLOYMENT APPEALS TRIBUNAL

### CLAIM OF:

EMPLOYEE

- claimant

### CASE NO.

MN1825/09

UD1934/09

### 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 P. McGrath BL

Members: Mr F. Moloney  
Mr J. Jordan

heard this claim at Wicklow on 16th February 2011.

### Representation:

Claimant: Mr. Liam Stafford BL, instructed by Bernadette Goff & Company, Solicitors, 11 Eglinton Road, Bray, Co Wicklow

Respondent: Mr. Conor Maguire, Conor Maguire & Co., Solicitors, Blacklion House, Greystones, Co. Wicklow.

The determination of the Tribunal was as follows:-

### Respondent's Case:

The respondent company is engaged in carpentry and joinery. The D family run the business. JD (the father) was the founder of the business and was a master joiner. JPD who is Managing Director incorporated the limited company in 2007 and his brothers ND who is in charge of the workshop and MD also work in the business. MD was responsible for initially employing the claimant.

JPD is responsible for staffing matters, remuneration and overall control. The claimant commenced his apprenticeship with the company and graduated in August 2008. No issues occurred with his work during this time. In November 2008 the claimant refused to do what he had been asked to do

and walked out. At 3 pm that day he came back and apologised. The incident was put to bed and he got on with things.

The claimant trained in traditional joinery. It is very specific work and safety measures apply. The respondents had no issues with the claimant's work during his tenure.

While the claimant worked in the workshop he took instructions from ND and on site he took instructions from MD and JPD.

On 11 February 2009 JPD arrived at the workshop between 3.30 and 4.00 pm and enquired where the claimant was. ND who worked in the workshop told him that when he arrived in the workshop at 10.45 am that morning he noticed little work had been done. ND had telephoned the claimant and the claimant told him that he was delivering tanks with JD. ND asked him to return to work and told him that his work was in the workshop and that was what he was being paid for. When the claimant returned a heated argument ensued and the claimant said he had too many bosses and had had enough. ND never threatened the claimant during that argument. The claimant had only sanded one and half doors that morning and ND contended that at least four doors should have been sanded. The claimant flung a bag of tools across the shed. He removed his own tools from the bag. JD walked into the workshop during the incident but did not get involved.

The claimant did not return to work either the next day or the following day. JPD and ND enquired from MD if he had spoken to the claimant. He had not. They decided to let things lie over the weekend.

JPD telephoned the claimant the following Monday and enquired if he was coming back to work. The claimant asked for his P45. JPD wanted the claimant to return to work. He was very surprised the claimant was not coming back to work. The company was extremely busy at that time and had a large job on. The claimant had gained huge experience and was a valuable member of staff. The claimant was provided with a pro forma P45.

MD telephoned the claimant between 2 pm and 3 pm that same day and asked what had happened. The claimant said he had an argument with ND. MD told him that ND was his boss and that he should take instructions from him.

The claimant had been treated like one of the family. He had been afforded the full use of the workshop in his spare time.

The claimant was not replaced in his job. The company was under a lot pressure and had no time to train up anyone new. Each family member took on more tasks.

### **Claimant's Case:**

The claimant was employed as a joiner/carpenter. He had four bosses during his tenure, JD, JPD, ND and MD.

On 11<sup>th</sup> February 2009 he commenced work at 7.45 am. He had sanded four doors when JD asked him to assist him with water tanks. In the course of helping JD he received a telephone call from ND who was swearing at him and told him to get back to work now. When he arrived back at the workshop ND said there was nothing done and that he "was sick of this crap" and then told him to "get out of here and he was going to beat the head off him". JD arrived half way through

the tirade and seemed bemused. He made no comment. The claimant took his tools and left.

Two weeks later MD telephoned him and asked him what's the story. MD said that if ND sacked him he was in the wrong. He was never asked to return to work.

**Determination:**

The Tribunal has carefully considered the evidence adduced in this hearing. The claimant worked for the respondent company for the best part of six or seven years. He served his apprenticeship there, coming into the workforce straight from school at the age of 16.

The respondent company operates a successful construction and joinery business.

It is common case that the claimant was a good employee who had never been subjected to any disciplinary process or given any warnings whether written or verbal.

The company was incorporated in 2007 and effectively was a family run company made up of four members of the same family together with the claimant. The net effect from the claimant's point of view was that he was answerable to all four members of the family. In practice, he was answerable to ND in the workshop and MD out on site, JPD was the Managing Director and seems to have been ultimately responsible for staffing matters, remuneration and overall control.

JD was the founder member and principal craftsman in the workplace.

The Tribunal heard evidence of previous incidents in the workplace, which purport to build up a picture of the claimant. However, there is no doubt that the claimant was a good worker whose productivity was not an issue. The Tribunal does not accept a propensity to being in any way difficult and the attempt to create such a picture was unwarranted and a belated attempt to try and justify the sequence of events that arose on or about 11<sup>th</sup> February 2009.

On that day the claimant had been called away from his duties in the workshop by JD. Whether the claimant was gone for one hour or twenty minutes is irrelevant. The claimant took his orders from whichever one of the D family was to hand – any confusion arising from that should have been sorted out by the D family. The claimant was not in a position to refuse JD because ND had prior call on his time.

It is common case that ND came into the workshop and found it empty. ND phoned the claimant to find out where he was.

The Tribunal finds as a fact that ND became enraged by the claimant's absence and what he perceived to have been an insufficient amount of work getting done in the workshop.

On his return to the workshop the claimant was met with a tirade of abuse, some but not all of which was overheard by JD. The Tribunal finds as a fact that ND behaved inappropriately, he lacked management skills and had no sense of proportion. The Tribunal notes that JD, despite being the cause for the claimant's absence, did not intervene, did not offer an explanation and did nothing to calm the situation – which as ND's father, he was in a position to do.

The Tribunal accepts that ND told the claimant to leave in the heat of the moment. The claimant did exactly that. The Tribunal recognises that (whilst regrettable) arguments of this sort can

happen from time to time in any workplace. How the parties behave and what the parties do in the aftermath of such a row is what the Tribunal will look at to determine the reasonableness of the parties concerned.

The Tribunal does not accept that the company made an unambiguous attempt to repair the damage that had been done. In the circumstances, the onus rested on the members of the D family to decide whether the claimant's on the spot dismissal was justified and any reading of the evidence could only bring them to the conclusion that it was not. As Managing Director, JPD should have made it understood to the claimant that the incident which occurred on 11<sup>th</sup> February 2009 should not have brought about the termination of the contract of employment – he should have allowed the claimant an opportunity to either refuse or accept an offer to come back to work. The phone calls made to the claimant did not satisfy the positive onus on the Managing Director.

The Tribunal finds that the claimant was unfairly dismissed and awards him compensation for loss of remuneration in the amount of €35,910.00. The Tribunal also awards the claimant €2,240.00 being the equivalent of four weeks 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)

