

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

CASE NO.
UD1118/2009
MN1130/2009
WT503/2009

against

EMPLOYER
under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. E. Murray

Members: Mr. D. Hegarty
Mr. J. Flavin

heard these claims in Cork on the 25th of May 2010 and 16th of July 2010

Representation:

Claimant: Mr. Paudie O'Mahony, Babington, Clarke & Mooney, Solicitors,
48 South Mall, Cork

Respondent: Mr. John Barry, Management Support Services (Ireland) Limited,
The Courtyard, Hill Street, Dublin 1

Preliminary Issue

The application in this instance was not brought within six months of the alleged dismissal. Having heard submissions made on behalf of the parties in this regard, the Tribunal took the view that there was a lack of clarity with regard to the date of termination. The Claimant received his P45 from the Respondent on the 7th of January 2009. The application was brought within six months of this date.

In all the circumstances the Tribunal took the view that the application had been properly brought within the time provided for by Statute, and the Claimant was entitled to proceed.

Respondent's Case

Evidence was given on behalf of the Respondent the confluence of which was as follows:

The Respondent took over the contract for the cleaning of an office building in Wilton in Cork in April 2008. The Claimant was employed by the Respondent prior to the transfer of the cleaning contract and was entitled on the transfer of undertaking to be employed by the Respondent. The Respondent was required to regularise the provision of cleaning services in the office building and required the work to be done between 6.00 p.m. and 9.00 p.m. Monday to Friday. The Claimant who is a Jehovah's witness wished to attend religious services on Tuesday and Thursday evenings for two hours and would not be available during the times required by the Respondent. Furthermore, when the Respondent sought alternative cleaning work for the Claimant he was unable to place him because of the Claimant's inability to use a buffing machine. This inability was caused by virtue of the fact that the Claimant is an amputee.

The Respondent also investigated the possibility of getting morning work for the Claimant but discovered that the Claimant had educational commitments in the mornings.

A number of meetings were held to resolve the matter between the Claimant and the Respondent and eventually the Claimant broke off contact with the Respondent saying "he was sick of meetings". Correspondence passed between the Claimant and the Respondent's Solicitors over the next number of weeks and ultimately the Claimant requested his P45 which was issued to him as stated earlier on the 7th of January 2009.

Claimant's Case.

The Claimant described how he worked for another cleaning company and how the contract was taken over by the Respondent in April 2008. He continued to work as usual but was ultimately told that a re-organisation was going to be required and that he would have to work Monday to Friday from 6.00 p.m. to 9.00 p.m. He said that this was impossible for him as he had to attend his religious services and this had always been an accommodation that his former employer had made for him. His former employer was himself a Jehovah's witness.

It was explained to him that this was not possible but that the Company would look for alternative employment on another site for him.

He attended a number of meetings and felt that he was not getting the response or respect that he deserved from the Company and he ultimately refused to attend any further meetings as he was not getting any positive news about employment.

He consulted his Solicitors and correspondence was entered into between his Solicitors and the Respondent.

Communications stopped from the Respondent and there was no contact for a number of months until ultimately the Claimant sought his P45.

The issue of availability of alternative employment was complicated by the fact that the Claimant could not work in the mornings either, as he was undertaking a course in further education. He conceded that he was also unable to use a buffer because of his amputation. He felt he was being considered only for work that the Respondent knew he could not perform.

Determination

The Tribunal unanimously finds that the Claimant has not established either that there was a constructive or any dismissal in this instance.

The Respondent took reasonable steps to seek alternative placement for the Claimant but because of the Claimant's own difficulties with regard to availability it proved to be impossible to find something that was suitable for him.

The Respondent does not appear to have terminated his position at any time nor acted in such a manner as would entitle the Claimant to terminate the contract of employment and the first indication of termination was when the Claimant sought his P45.

In all the circumstances the Tribunal is unable to make a finding in favour of the Claimant in this case and dismisses the claim under the Unfair Dismissals Acts, 1977 to 2007. The claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, and under the Organisation of Working Time Act, 1997, are also dismissed because the Tribunal does not find the respondent in breach of the said legislation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)