

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE-*Appellant*

CASE NO.
MN161/2010
WT87/2010
UD161/2010

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. P. O'Leary B L

Members: Mr M. Carr
Mr O. Nulty

heard this claim at Monaghan on 19th October 2011

Representation:

Claimant: Wilkie & Flanagan, Solicitors, Main Street, Castleblayney,
Co Monaghan

Respondent: Ms Elaine O'Neill, Peninsula Business Services (Ireland)
Limited, Unit 3, Ground Floor, Block S, East Point Business
Park, Dublin 3
Pierce O'Sullivan & Associates, Solicitors, Market Street,
Cootehill, Co Cavan

The determination of the Tribunal was as follows:-

(Dismissal was in dispute therefore, as a case of constructive dismissal the claimant went into evidence first)

Claimant's case:

In his sworn evidence the claimant MM confirmed that he worked as a lorry driver for the respondent company from February 2007. The job involved driving through the UK and Ireland As a rule he found out each evening where his job would take him the next day. Employment was uneventful until October 2009. The rota he was working that week had him home early each evening because his wife was pregnant and there were concerns about her. MM was asked on Friday morning by the office staff to travel to the UK on Sunday. He explained

that he wanted that weekend at home because of the situation. He went about his duties as normal on the day but when he returned to the yard to wash his truck he was approached by BM his boss and asked to do the UK run on Sunday. MM said he couldn't do Sunday but would go on Monday. BM said he was trying to run a business and he would get somebody else to do the run, he also told the claimant to park up his truck and go. MM asked him what he meant and BM told him to take it whatever way he liked. BM also told him if he stopped washing the truck he would deduct half a days pay from him.

MM took it that he was sacked, he drove the truck to the end of the yard and proceeded to take his belongings from it.

BM then approached him and told him he was not sacked, he was leaving of his own free will.

There was no further contact over the weekend. MM tried to ring BM's mobile on Monday but got no reply. Nothing more was heard until the Tribunal notification went out.

Under cross examination MM denied that he told the respondent to stick his job or that he told a colleague PB that he was jacking it in. He also denied that he contacted BM at a later stage to apologise. He did ring DM son of BM to ask what was going on, DM said there was nothing he could do and that his P45 would be sent on.

His job had been offered back to him when the Tribunal proceeding came to light but it was a family business and he felt it would not have been a "good situation" to return to.

Respondents case:

BM managing director of the company stated that he had no problems with the claimant, he was one of his better drivers He did ask him to go to the UK on the date in question and MM just said he wasn't going, he gave no explanation and BM was not aware of his wife's pregnancy or complications.

BM said he would have to get somebody else to do the run and that the truck had to be left in the yard.

MM hopped the washer on the ground and told him to "stick the run".

BM didn't want to lose a good driver, he would be down a man for the coming week so he said "remember you are not sacked".

MM spoke to PB who was in the yard at the time and BM told the claimant if he wasn't staying not to hold PB back from his job.

BM did not hear back from the claimant until April/May 2011 when he got a phone call from him apologising and asking him for a telephone number for SM one of his sons.

Under cross examination BM stated that he did not make contact with the claimant after the event in October 2009. He had no contact number for MM because he had had a company phone. He also said that the claimant had been told at least 10 times his job was still there for him.

It was no problem for people to have a weekend off but the company needed to be told in advance. It was not unusual for something to happen and this was no different. The problem was when MM was asked to leave the truck in the yard.

PB in his sworn evidence stated that he was in the yard on the date in question. MM was there and had his things taken out of his lorry.

At some stage MM approached him in a bad humour and said "I've had enough of this sh.te, I'm jacking it in".

He did not at any time hear BM say anything to MM about his job.

SM son of the managing director in his sworn evidence stated that the claimant had rang him on the evening of the incident, he said that he was fed up being away from home so much.

At some time after the incident he did see the claimant in Dublin Port driving a truck for another company.

DM son of the managing director stated that he did the planning for loads to be transported, he also filled in as a driver. On the weekend in question some people were going out to the UK on the Saturday night and some on the Sunday. He had no idea about the claimant's wife's illness, the girls in the office didn't know what MM could or could not do over the weekend.

His father said he would try and sort things out when the truck came in. DM then got a call from his father stating that the claimant had quit, he told his father to make sure and tell him he left of his own accord.

When the claimant rang him to ask "what was going on" DM again told the claimant he had left of his own accord. MM did not like parting with his truck, he was a trusted employee and could take it home. MM was told there would not be any work on the Monday and Tuesday of that week as his truck would be in the UK with another driver.

He then asked for his P45 and put down the phone on DM saying "you'll always be right anyway". Under cross examination DM said he thought the claimant telephoned him because he was trying to go back on what he had done, MM didn't want the truck taken from him and he didn't want to lose the two day's pay either. If the claimant had cooled down and wanted to come back to work for the respondent it would not have been a problem.

Determination:

The Tribunal finds that the claimant has failed to prove that he was dismissed and determines that the claim under the Unfair Dismissals Acts fails. The Tribunal is influenced by the strong conflict of evidence between the claimant and (BM) for the respondent in relation to the circumstances surrounding the claimant's cessation of employment.

In the claimant's claim that he was dismissed by (BM) the Tribunal prefer the evidence of the respondent and therefore the claim under the Unfair Dismissals Acts fails.

A claim for minimum notice does not arise in a case of constructive dismissal, therefore the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2007 must fail. and is also dismissed.

The Tribunal makes no order under the Organisation Of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

