

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.
MN425/2010

EMPLOYEE - *claimant*

UD463/2010
WT192/2010

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. Hurley
Members: Mr. W. O'Carroll
Ms H. Henry

heard this claim at Galway on 6th October 2011

Representation:

Claimant(s) : Ms Gemma Forde, Charles Foley, Solicitors, Market Square,
Gort, Co Galway

Respondent(s) : Ms Muireann McEnery, Peninsula Business Services (Ireland)
Limited, Unit 3 Ground Floor, Block S, East Point Business
Park, Dublin 3

Claimant's Case

The claimant gave direct evidence that he commenced working for the respondent on 10 March 2008 as a car valet attendant. He had a good performance record and never received any verbal or written warnings. He remained in continuous employment up until his dismissal in January 2010. On the morning of 2 January 2010 he telephoned his manager, known as (R) informing him that he was sick and unable to attend work. (R) said that was okay as they were not busy. Later that day (R) telephoned him and said that (LC) had said that nobody was allowed to be sick and he should buy a ticket to return to Poland. (R) also told him that (LC) had said there was no work for him anymore.

The claimant contacted (R) again on Monday 4 January 2010 enquiring if he should report for

work. (R) told him that (LC) stated that if he wanted his P45 he should call to the office and collect it. On 5 January 2010 he called to the office and met with (LC) and enquired about his P45.. He was told by (LC) to call back the following day to collect it. He called on the following day and was told by (LC) that his P45 would be posted to him. He received his P45 by post sometime later. He informed (LC) on 6 January that this was not fair. He was not given the opportunity to appeal the decision to dismiss him and there were no grievance procedures outlined in his contract of employment.

The claimant gave further evidence that he was not paid his entitlements for bank holidays. He could not recall the bank holidays for which he had not received his entitlements. After his dismissal he was in receipt of Social Welfare for 6 months. He sought alternative work but was unsuccessful. He returned to Poland in May 2010 and currently resides there. He is in employment in Poland earning approximately €500 per month.

Under cross examination he confirmed that (LC) did not tell him that he was fired and never said that he was dismissed. He denied that (LC) wanted to discuss proposed changes to the rota system on 6 January 2010 and he had no discussions with (LC) in December 2009 concerning a reduction in hours of work. On 6 January 2010 he asked (LC) for his P45 and (LC) did not say that he was not fired. He showed his medical certificate to (LC) on 6 January 2010 which stated that he was unable to attend work from 2 January 2010 to 16 January 2010. He confirmed that he contacted Social Welfare sometime after 6 January 2010 but could not recall the exact date. It may have been two weeks after his dismissal. He sought alternative work after his dismissal but was unsuccessful in his attempts to secure work. He was not in a position to provide the Tribunal with any written documentation to support his efforts to secure alternative employment. He is of the view that he was dismissed from his employment on 4 January 2010.

The next witness (R) gave evidence that he was promoted to the position of manager by the respondent in September 2009. He had responsibility for daily cash handling and completing the weekly rota. On 2 January 2010 he received a telephone call from the claimant informing him that the claimant was sick and unable to attend work. He told the claimant that this was no problem. Later that morning at approximately 10am (LC) telephoned enquiring if they were busy. He told (LC) that the claimant was sick and not coming to work. (LC) then said that nobody can be sick and the claimant can buy a ticket for Poland. He contacted the claimant and conveyed that information to him. On 4 January 2010 the claimant contacted him enquiring if he could come to work. The witness contacted (LC) who informed him that the claimant did not work here anymore. (LC) also said that the claimant should contact him to collect his P45. Under cross examination he denied that (LC) told him to tell the claimant to call to the office to discuss the weekly rota system. (LC) did not say anything in 2009 about discussing the rotas.

Respondent's Case

The co-owner of the respondent known as (LC) gave evidence that the respondent operates three car valeting centres in the Galway city area each of which is within walking distance from one another. Staff move between each centre on a regular basis. On 2 January 2010 he received a telephone call from (R) informing him that the claimant was sick and unable to attend work. Accordingly he re-located staff to cover the centre from which the claimant was absent and informed (R) to tell the claimant to call to the respondent's office upon his return to work. On Monday 4 January 2010 he was contacted by (R) to see if the claimant could return to work. He told (R) to tell the claimant to call to the office as he wanted to discuss the new rota system with the claimant. The respondent had suffered a 60% decrease in its turnover since 2008 and had

discussed plans for the introduction of a new rota system with its employees in December 2009. The staff in general had accepted the new rota system but the claimant and his manager known as (R) had not. This new system was due to be introduced in January 2010 and the purpose of this plan was to run the business more efficiently. It had the effect of spreading employees hours over a six day week rather than a five day week.

The claimant called to the respondent's office on 6 January 2010 and stated that he wanted his wages and his P45. (LC) informed him that he just wished to discuss the new rota system but the claimant produced a document and said "I will screw you". At that point (LC) gave the claimant his wages. (LC) was never furnished with a medical certificate at any stage by the claimant. A couple of days later (LC) was contacted by the Social Welfare office enquiring if the claimant worked for the respondent. (LC) informed Social Welfare that the claimant had not been sacked or made redundant. On 11 February 2010 he also completed and returned a document which had been sent to him by Social Welfare. In that document he informed Social Welfare that the claimant had left his employment for no apparent reason, his position remained open and he would be welcomed back with an immediate start. He never heard from the claimant again. He gave further evidence that all employees receive their bank holiday entitlements.

Under cross examination he confirmed that all rotas are completed by himself or (AN). He denied that he told (R) that the claimant should collect his P45. On 6 January 2010 he showed the new rota system to the claimant but the claimant was quite dogmatic and said he wanted his P45.

Determination

Having carefully considered the evidence adduced the Tribunal is of the view that the claims under the Unfair Dismissals Acts, the Minimum Notice and Terms of Employment Acts and the Organisation of Working Time Act fail. In particular the Tribunal relies on the evidence of (LC) that he did not speak to the claimant in relation to his dismissal and did not tell the claimant that he was dismissed. The Tribunal is persuaded by his statement that he does not effect dismissals or reprimands indirectly. The Tribunal also notes the claimant's evidence that he was not told by (LC) that he was fired. The claimant was asked to attend at the respondent's office to discuss a proposed new rota system. The claimant attended and did not give any evidence that (LC) dismissed him. The claimant has not convincingly put forward any evidence that he has a sustainable claim under the Organisation of Working Time Act. The Tribunal unanimously prefers the evidence of (LC) to that of the claimant and dismisses all the claims.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

