

EMPLOYMENT APPEALS TRIBUNAL

CASE NO.
CLAIM OF:

UD 1194/10

EMPLOYEE-*Claimant*

Against

EMPLOYER-*Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. E. Murray
Members: Mr. D. Hegarty
Ms. H. Kelleher

heard this claim at Cork on 18th of October 2011

Representation:

Claimant:

Niall Murphy & Company, Solicitors,
Joyce House, Office Campus, Ballincollig Town Centre,
Ballincollig, Co. Cork.

Respondent:

Background

The Claimant in this case gave evidence on his own behalf. He is a twenty eight year old floor applicator who commenced work with the Respondent Company in 2007. His job comprised of the application of epoxy resin surface coating to floors.

He worked thirty nine hours per week plus overtime and he rarely had Saturday or Sunday off. He described that every morning they would meet with the Managing Director at the company store and would be given their various tasks for the day, and they would drive out from there to the various sites. He had received no complaints about the quality of his work and the company appeared to have a large portfolio of clients and was very busy. On the 7th of July 2010 he got to the stores at about 8.10 a.m. He met his

colleagues and the Managing Director of the company, and he was sent to St. Finbarr's Hospital to complete the third day of a job in a shower area which was being refurbished. He was assisted by a colleague on the first and second days of the job but was on his own on this day and he arrived at St. Finbarr's Hospital at approximately 8.45 a.m. He discovered that the transformer that he required to do his work was not working. He telephoned a work colleague about another transformer and drove to another location to pick this up. He got a replacement transformer and had his tea break with his colleagues, and returned to St. Finbarr's thereafter. He was working in the shower area when the Managing Director came in at around 11.00 a.m.

The Managing Director appeared angry and addressed him as follows "what the f.... are you doing all morning, I cant' make money like this, do me a favour and leave on Friday". He was completely taken aback. He was extremely upset by the exchange, he was so upset that he left the site on foot leaving the van behind.

Some days later he met with the Managing Director who said that the fairest thing to do would be for the company to make him redundant. He was not happy to take redundancy as he felt that he was being unfairly dismissed. He received a phone call from his employer telling him that he should tell the Labour Exchange that he was made redundant on the previous Wednesday and that he had gotten two weeks notice previously. He was not prepared to do this and told the Labour Exchange that he had been unfairly dismissed.

He arranged to meet the Managing Director in Jury's Hotel car park at the latter's request. The Managing Director produced paper work together with a cheque in the sum of €3800.00 which was supposed to be his redundancy. He asked if he could keep his job. This was declined.

The Claimant said he was married with two children and that he had looked for work from the date of his dismissal up to the 9th of August 2011 when he got a job as a care assistant in a nursing home. He was out of work for thirteen months in total. During that time he did a Fetac course. He is now on €9.82 per hour which is less than the income which he had enjoyed as an applicator.

Evidence was given on behalf of the company by the Managing Director. He said that he went to St. Finbarr's Hospital because there were delays being complained of by the main contractor. The job they were doing was the conversion of a bedroom to a bathroom. He was receiving €1500.00 for this job. The job was dragging on unnecessarily. Prior to the commencement of the work he had given instructions as to how it should be done and repeated these instructions on three different occasions. The job was not being done in the manner in which he wanted it to proceed. The main contractor was expressing concerns and when he spoke to the Claimant about this he was reassured that there was no problem.

He met with the Claimant on the following morning at the job location and

expressed his concerns about the quality of the work. He also spoke to him about the availability of transformers. He was not satisfied with the response that he got or that it was taking three and a half days to get the floor completed. The Claimant responded by saying “when you think I’m good enough I’ll come back” and that the Claimant walked off the job.

He said that he subsequently met with the Claimant as had been described and was trying to do him a favour in giving him redundancy. He was in no doubt that the Claimant would have come back to work if he had been invited but having walked out he felt that he did not have any entitlement to come back. He denied that he dismissed the Claimant and said that the Claimant had walked off the job and because of that he would not give him his job back although he was in no doubt that the Claimant was looking to get his job back.

Determination

There is little dispute between the parties in this case as to the circumstances in which the Claimant’s employment came to an end. The Tribunal accepts that the words used by the Managing Director of the employer when he met the Claimant on the 7th of July 2010 at St. Finbarr’s Hospital were as described by the Claimant and would have conveyed to the Claimant that his employment was being terminated.

This amounted to a Summary Dismissal by the Respondent who sought to invoke no procedures of any kind in relation to his dissatisfaction with the manner in which the Claimant was undertaking the job in hand. The Respondent was in no doubt that the Claimant would have come back to work if he had been permitted but the Respondent was not prepared to countenance that.

The Tribunal are unanimously satisfied that this amounted to an unfair dismissal of the Claimant. The Tribunal are satisfied that the Claimant has taken all reasonable steps to mitigate his losses and is satisfied that compensation is the appropriate remedy. In the circumstances, the Tribunal makes an award of compensation in the sum of €35,000.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

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Employment Appeals Tribunal

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(Sgd.) _____
(CHAIRMAN)

