

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE - claimant

CASE NO.

RP1892/10
UD1400/10
MN1346/10
WT569/10

Against

EMPLOYER - respondent

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr J. Flanagan
Mr A. Butler

heard this claim at Wicklow on 9th November 2011.

Representation:

Claimant: Mr. Kevin Staunton BL, instructed by Mr. Donal O'Sullivan, D M O'Sullivan & Co, Solicitors, 4 S Mary's Road, Arklow, Co Wicklow

Respondent Mr Michael McGrath, IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

At the outset of the hearing the claims under the Redundancy Payments Acts 1967 to 2007, the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act 1995 were withdrawn.

Respondent's Case:

AM is Director and owner of the respondent company. The company provides teaching resources to schools. The company has four employees including himself. LS looks after the office end of the business and both SOT and the claimant worked in the warehouse. AM spends most of his time on the road looking for business.

The claimant had trained his son in football. AM approached the claimant and initially offered him part time work and subsequently the claimant assumed full time work.

The claimant was issued with his contract of employment. He made no comment on it and placed it in his car. The claimant's contract of employment clearly set out the requirement to submit a medical certificate on the third day of a continuous absence. The claimant had furnished the respondent with one or two medical certificates when he was ill.

On 6th May 2009 AM received a text message from the claimant that he would not be in as his back was still sore. AM subsequently telephoned the office and spoke to SOT who informed him that the claimant had fallen off a step ladder the previous day and went home around 12.40pm.

On 7th May 2009 at approximately 6.30 pm the claimant telephoned AM. The claimant had visited the hospital, he had a hairline fracture of his spine, torn ligaments and internal bruising. He said he could return to work the following week if he could be provided with lighter duties.

AM told the claimant that he would need to see a medical report stating that he was fully fit to resume his duties. The claimant suggested that he paid for that week he was out sick. No sick pay policy exists in the company.

AM could not provide the claimant with light duties. The claimant then became quite abusive, said he knew his rights and there were threats of legal action being taken. AM then ceased the conversation.

On 8th May 2009 the claimant's wife came into the office to collect the claimant's wages. She indicated that AM should pay the claimant for the week he was out. AM stated that he was not paying the full wages. The claimant's wife became abusive and threatened to contact the HAS and that he could be closed down. Everyone overheard the conversation. The claimant's wife slammed the door when she left.

Two medical certificates covering the claimant's absence from 5th May 2009 to 18th May 2009 were received by the respondent on 12th May 2009.

Subsequent medical certificates received were either posted in or hand delivered and were sporadic. Three certificates were received on 17th June 2009, four received on 10th July 2009 and two were received on 21st July 2009. Then there was a gap between 21st July 2009 and 24th September 2009.

As AM did not receive any medical certificates in the following weeks he wrote to the claimant on 2nd December 2009. He referred in that letter to the absence of a medical report to confirm the nature and extent of his injuries and his prognosis. The claimant had not provided the company with a return to work date.

AM wanted to know whether the claimant was medically fit to resume his normal duties. He also outlined that the company could not keep the claimant's job open as it was causing difficulties to operate as a normal company. During the claimant's period of absence other staffmembers had to do some of the claimant's duties and AM had to work weekends.

On 7th December 2009 the claimant furnished the company with five medical certificates. These certificates covered the claimant's absence from 5th October 2009 to 14th December 2009. The last medical certificate received covered the period 30th December 2009 to 18th January 2010.

Between 7th May 2009 and February 2010 the claimant never furnished a medical report.

AM again wrote to the claimant on 24th February 2010. He outlined that the claimant had been absent for nearly ten months and this had posed operational difficulties for the respondent. He regretted that he no longer could maintain his employment and made the decision to terminate his employment. He provided the claimant with his P60 and P45.

In early May AM received a letter and an application form from the Injuries Board which the claimant had completed. AM passed this correspondence to his insurance company.

In hindsight AM contended that he did not follow procedures. He never followed up on the letter he sent to the claimant on 2nd December 2009. He had no communication with the claimant during the his long term absence.

AM contended that he acted reasonably in the circumstances. He had given the claimant the opportunity to give his side of the story. During the claimant's absence he had seen him about thirty times but at no stage did the claimant approach him during that time.

Claimant's Case:

The claimant had an accident at work on 5th May 2009. He fell off a step ladder. He told his colleague SD what had occurred. He went home at lunch time that day. He telephoned AM but was unsuccessful in making contact with him. The next day he texted AM. On Thursday, 7th May 2009 he spoke to AM and told him that he had a suspected hairline fracture. He had an x ray in the hospital. He explained that he wanted to return to work the following week on lighter duties. AM said he would get back to him.

AM subsequently telephoned him and told him he could come back to work provided he furnished a medical report indicating that he was certified fit to work.

The claimant was unfit to return to work as his injury persisted. He furnished medical certificates during his absence from work, some of which covered a four week period.

On 16th October 2009 the claimant attended a meeting with an engineer and AM. AM ignored him at that meeting.

The claimant was 100% certain that he did not receive a letter from the respondent dated 2nd December 2009. Originally his wife hand delivered his certificates into the company and after some time she posted them in. The claimant's understanding was that it was fine just to send in

medical certificates. To his wife's knowledge the claimant's absence from work was covered by medical certificates. The claimant could not afford to pay for a medical report. When the claimant received his letter of dismissal and his P45 he saw no point in furnishing to the company two further medical certificates he had.

He had no further contact from AM until he received a letter from AM on 1st March 2010 dismissing him from his employment.

The claimant contended that he was mistreated when he had the accident at work. He presumed his job would be left open for him.

Since the termination of his employment the claimant has been in receipt of a disability allowance.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal finds that the respondent did not follow fair procedures and the claimant was not offered a right of appeal following his dismissal.

The Tribunal finds that the manner in which the claimant's employment was terminated was unreasonable and abrupt.

In the circumstances the Tribunal finds that the claimant was unfairly dismissed and awards him €1,280.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)