

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *claimant*

UD1178/2010

MN1140/2010

against

EMPLOYER - *respondent*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan BL

Members: Mr D. Moore
Mr J. Flannery

heard this claim at Dublin on 13th October 2011
and 20th December 2011

Representation:

Claimant(s) : Ms. Sile O Kelly BL instructed by Mr. Francis Rowan, FX Rowan & Co,
Solicitors, 14 Upper Pembroke Street, Dublin 2

Respondent(s) : Ms Karen Talbot BL instructed by Mr. Pdraig Mullins, Kelly Noone & Co.,
Solicitors, Taney Hall, Eglinton Terrace, Dundrum, Dublin 14

Respondent's case

(WC) for the respondent gave evidence that the company is a small subcontracting building company currently employing six employees. The company operates on a mixture of commercial and residential building sites generally building concrete frames for main contractors on site. The claimant was employed by the company for a seven month period in 2003 and left to travel to Australia. The company was happy to re-employ him in 2005 and over a period of time he qualified as a shuttering carpenter.

Due to economic circumstances it was necessary for the company to introduce two rounds of pay

cuts and all employees had their wages reduced including the claimant. The claimant was unhappy with the latest round of pay cuts and in August 2009 he lodged a claim to the Rights Commissioner service. A hearing took place in November 2009 and the claimant was awarded €500. The company accepted that decision and paid the claimant the amount awarded. As far as the company was concerned that was the end of the matter and they wanted to move forward with the claimant remaining in employment. However from then on the claimant's work performance disimproved and there was little or no production from him. The witness's father (MC), told the claimant on many occasions that his performance needed to improve.

The claimant failed to report for work on 9th and 16th November 2009. He was given a verbal warning for this absenteeism on 17th November 2009 and confirmation of this verbal warning was issued to the claimant in writing by way of letter dated 20th November 2009. The claimant did not appeal this warning. On 28th January 2010 the claimant was given a written warning concerning his unacceptable timekeeping and the claimant did not appeal this warning. On the morning of 1st February 2010 (MC) took issue with the claimant's performance on a site. Later that afternoon the claimant walked off the site without permission. He did not sign off the site and as such was in breach of health and safety regulations. The witness gave further evidence that the claimant contacted him later on the evening of 2nd February 2010 by way of a text message. The claimant stated that he had left the site earlier that day because of a panic attack precipitated by abuse he had experienced from (MC). The witness consulted with (MC) and took the decision to dismiss the claimant on 2nd February 2010. This decision was conveyed to the claimant by way of letter dated 6th February 2010 when on 8th February 2010 the claimant arrived on site and was handed the letter of termination by (MC). The claimant then gave (MC) a medical certificate and left the site.

Under cross-examination the witness confirmed that he is in the construction industry since 2000. The company does not issue contracts of employment and does not have any grievance procedure policies in place. He confirmed that the company had a good working relationship with the claimant prior to the Rights Commissioner hearing. He had no knowledge of his father, (MC) using foul and abusive language towards the claimant. He recalled an incident in May/June 2009 when a wall burst on a site. He was told by the claimant that (MC) had told him that he was sacked. He (the witness) told the claimant to pay no attention to (MC's) remark. He confirmed that he was told by (MC) that the claimant was late for work on occasions and that the claimant was doing as little work as possible. He confirmed that he did not speak to the claimant to seek his version of events concerning the morning of 1st February 2010.

Claimant's Case

Dr (M) gave evidence that the claimant attended his practice on 2nd February 2010. He confirmed that the claimant was suffering from anxiety symptoms as a result of alleged workplace abuse and was suffering from panic attacks due to the behaviour of his manager. He was certified as being unfit for work for one week.

The claimant gave evidence that he worked for the respondent for 5 years. He had a good working relationship with the respondent until a series of pay cuts were introduced. These pay cuts were introduced without consultation and a lorry which the respondent had provided him with was repossessed by the respondent. He was unhappy with this particularly because of the last cut and he brought a claim to the Rights Commissioner service in August 2009 under the Payment of Wages Act. The claim was heard in December 2009 and an award was made in his favour. His working relationship subsequently deteriorated and he was frequently subjected to foul and abusive

by (MC). This abuse was carried out in the presence of work colleagues. (MC) told him that he would get rid of him after the Rights Commissioner's hearing and his working conditions became intolerable. He accepted that he did not report for work on two occasions in November 2009 and he gave reasons for this.

On 1st February 2010 (MC) roared abuse at him as he was carrying out his duties. This abuse was carried out in front of his colleagues. He felt humiliated by this abuse, was very upset and left the site. He did not sign off the site as nobody signed off that particular site. He visited his doctor on the following day and was certified as being unfit for work for one week. He also texted (WC) informing him as to the abuse he was being subjected to by (MC). He returned to work on the following Monday and was met by (MC). (MC) handed him a letter and said "you're gone". The meeting lasted approximately 2 minutes and involved no discussion. He was not asked for any explanation and he did not receive any notice of his dismissal.

Under cross-examination the claimant denied that he requested to be paid union rates by the respondent and he said he never finished work at 4pm. He accepted that when he returned to work after the Rights Commissioner he was not sacked. He denied that his attitude and work performance changed after the Rights Commissioner hearing. He said he had previous industry experience before joining the respondent company and he accepted that he had completed the SAFE Pass course and understood the importance of that course. He did not sign off the site on 1st February 2010 as it was not normal practice to do so on that site.

Determination

Having considered the evidence adduced at the hearing the Tribunal finds that the claimant was dismissed as a direct consequence of his lodging a claim with the Rights Commissioner regarding the reduction in his wages. In the circumstances the claimant was unfairly dismissed. The Tribunal awards the claimant an amount of €31,000.00 under the Unfair Dismissals Acts 1977 to 2007.

The Tribunal accepts that the respondent reduced wages due to a need to cut costs because of a downturn in its business.

The Tribunal finds that the claimant's salary for the relevant period was, in accordance with his P60 for the year 31st December 2009, €594.59 per week gross.

The Tribunal determines that the claimant is entitled to four weeks' notice because for the purposes of the Unfair Dismissals Acts where due notice was not given, the dismissal is deemed to have occurred at the time such notice, if given, would have expired. The Tribunal awards the claimant an amount of €2,378.36 under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

