

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD1667/2010

against

EMPLOYER
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. J. McGovern BL

Members: Mr. F. Moloney
Ms. E. Brezina

heard this claim in Dublin on 6 January 2012

Representation:

Claimant(s):

Ms. Bernadette Kirby BL instructed by
Becker Tansey & Co, Solicitors,
Jubilee House, New Road,
Clondalkin, Dublin 22

Respondent(s):

No attendance or representation

The determination of the Tribunal was as follows:-

The claimant, a plant manager whose employment had begun in June 1983, alleged unfair dismissal arising out of a verbal and physical assault upon him carried out on 4 February 2010 by the respondent's managing director (hereafter referred to as JD). At the time the claimant was working for the respondent at one of its subsidiary plants in Romania. It was alleged that JD had hurled a mobile phone at the claimant striking him violently in the face and that the claimant, who had been employed by the company for some twenty-seven years, was so traumatised and shocked by JD's actions that the claimant departed immediately for Ireland.

The Tribunal was informed in writing that the respondent company had gone into

receivership on 20 April 2011, that the claimant had left the company's employment prior to the receiver's appointment and that the company would not contest the case.

At the Tribunal hearing the claimant's representative said in an opening statement that the claimant had started in a junior position in 1983 but had worked his way up to senior plant manager. The company made rubber mats. The claimant worked in Romania for three weeks out of four and in Dublin for the fourth week. The claimant could work from home. That was the last three years of the claimant's employment. The claimant always paid tax in Ireland.

In sworn testimony at the Tribunal hearing the claimant stated that he had never got a contract and that there had been a slight problem with product packaging at the start of February 2010. The problem related to a very small percentage of products but JD started to shout and scream. JD flung a mobile phone and hit the claimant across the face. The claimant had not seen JD like that before and was very disturbed by the incident. The claimant left the factory, returned to Ireland and subsequently attended his GP. The claimant obtained medical certification and did not return to work immediately. When he did return to work he worked from home as had been his practice previously. He did this with the knowledge of DD, his manager in Ireland. Despite this his employment was terminated and he received a P45 dated 3 March 2010. He received a second P45 dated the 18th March 2010. The claimant submitted medical certificates to his employer until June 2010 and continued to take medication during this period.

The Tribunal was referred to a letter dated 31 May 2010 from JD to the claimant's solicitors stating that the claimant had walked out of his job on 4 February 2010. However, the claimant stated under oath to the Tribunal that he had not walked out but had kept working for the company although he did state that he had had no further contact with JD. He had done some work from home and had answered e-mails to plan trips for customers to go to Romania. He had done on-line work but could not go to the factory. He could monitor factory camera recordings but the amount of correspondence which reached him diminished. He made complaint to the operations manager (DD) and to the financial controller (BQ) about his treatment but could not go to his workplace. He told the Tribunal that he had all his texts typed up.

Asked if there had been a company procedure for dealing with his issue, the claimant replied that DD (operations manager and son of JD) had said that he had had similar treatment from

JD in October 2009. DD had tried to get JD to let the claimant back to Romania or to another company location in Lithuania but to no avail. The claimant's representative said that it was still possible that proceedings would be issued against JD personally.

The claimant gave evidence that he now works with a new company and has been there since November 2010.

Determination:

Having heard the claimant's uncontroverted evidence, the Tribunal finds that he was unfairly dismissed and awards him compensation in the amount of €26,931.00 (i.e. twenty weeks' gross pay at €1,346.55 per week) under the Unfair Dismissals Acts, 1977 to 2007.

It should be noted that payments from state funds in the event of a liquidation or receivership are subject to a statutory ceiling of €600.00 per week

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)