

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE–**Claimant**

UD1271/2010

against

MN1222/2010

EMPLOYER- **Respondent**

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Ryan

Members: Mr M. Carr
Ms A. Moore

heard these claims at Cavan on 24 November 2011

Representation:

Claimant:

Mr Alan Crossan, Garrett J. Fortune & Co. Solicitors,
11 Church View, Cavan

Respondent:

Mr Damian Glancy, George V. Maloney & Co. Solicitors,
6 Farnham Street, Cavan

The determination of the Tribunal was as follows:

Dismissal being in dispute it fell to the claimant to prove the fact of dismissal

The claimant was employed as general operative in the respondent's yard from 1997. Following an accident at work in 2006 the claimant had been employed on a three-day week, Wednesday to Friday, and did not work on mart days, generally Tuesdays.

In January 2010 the claimant developed appendicitis and on 27 January 2010 was hospitalised for an appendectomy. It is the claimant's position that he phoned the yard supervisor (YS) to advise him of his condition and that he would be away from work for some time. The claimant submitted a hospital certificate for two weeks but did not submit any further medical certificates, his position being that it was not the custom and practice to provide certificates, particularly in circumstances where there was no sick pay scheme in the respondent; he had lodged medical certificates with social welfare.

After his period of recuperation the claimant's position is that he advised YS on 5 April 2010 that he would return to work on Wednesday 7 April 2010. The claimant returned to work on 7 April 2010 at around 9-30am. He met YS on his return to work. The claimant's principal duties involve cleaning the yard and he went about these duties until around 3-30pm when a committee member (CM) approached him asked him to meet the general manager (GM) in GM's office at 4-00pm. The claimant's position is that when they met GM told him to "get the fuck out of here and don't come back anymore". The claimant took this as a dismissal and left there was no contact from GM or anyone else from the respondent from that day even when he went to collect his wages for 7 April on Friday 9 April 2010. He told the Tribunal that he was quite frightened by the way GM approached him and spoke to him such that he was not prepared to return to work for the respondent and did not trust them anymore.

The respondent's position is that, having taken on a temporary employee in the claimant's absence, they received no notification of his return to work. GM only discovered that the claimant had returned to work when CM brought it to his attention in the afternoon. GM accepted he was surprised and very annoyed. He accepted using the words complained of but denied telling the claimant not to come back. The respondent's position is that the claimant has never been dismissed and the position is still open to the claimant. The language used was part of the rough and tumble of the mart.

Determination:

The Tribunal is satisfied that the claimant gave notice of his intention to return to work on 7 April. It is not disputed that YS knew that the claimant had returned to work. If the respondent had an issue with the claimant's return the time to take the issue up with him was when he returned not after he had all but completed a full day's work. There is no doubt but that the words used by GM on the afternoon of 7 April amount to a dismissal, there was no grievance procedure in existence for the claimant to challenge the dismissal and being a dismissal without any or fair procedure the dismissal was unfair. The Tribunal awards €19,968-00, being 104 weeks' pay, under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal further awards €1,152-00, being six weeks' pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)