

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

-Claimant

CASE NO.
UD1877/2010
MN1829/2010
WT835/2010

against
EMPLOYER

-Respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr R. Murphy
Mr F. Barry

heard this claim at Dublin on 5th January 2012

Representation:

Claimant: Mr. Frank Turvey B.L. instructed by Brophy, Solicitors,
38-40 Parliament Street, Dublin 2

Respondent: Mr Pat Brady, Workplace Solutions, 56 St. Columbanus Road,
Milltown, Dublin 14

The determination of the Tribunal was as follows:

Dismissal as a fact was in dispute between the parties.

The claimant worked on the butcher counter in the respondent's business. An issue arose when the claimant was required to attend court on Thursday, 11th February 2010. It was the claimant's evidence that on Friday, 5th February 2010, he approached the director of the business outlining that he had a court date and requesting three hours off the following Thursday morning. He also informed the director that he had arranged cover for the time off.

It was the director's evidence that the claimant did not outline to him the reason he required the time off. The director denied the claimant's request as the claimant's colleague was not qualified to cover the butcher counter. It was common case between the parties that the director told the claimant if he did not attend for work the following Thursday; there might not be a job for him.

Subsequently, the Kitchen Manager told the director that she was aware that the claimant had a court summons for the following Thursday. This was confirmed by her in evidence.

It was the director's evidence that upon hearing this he approached the claimant that same day and offered to facilitate him with time off for court. He considered the matter had been resolved between them until the claimant submitted his notice at 6pm that day.

The claimant in his evidence refuted that the director had a discussion with him about facilitating his time off and he also refuted that he had submitted his notice. He attended for work on the 8th and 9th February 2010. At the end of work on Tuesday, 9th February 2010 the director approached the claimant and said "here is your money" and dismissed him.

He stated that he had received three weeks holidays per year but was not paid minimum notice. The claimant gave evidence of loss and his efforts to mitigate that loss.

Determination:

The Tribunal has carefully considered the evidence adduced in the course of this hearing. The Tribunal is faced with two diametrically opposing accounts of what led up to the termination of the claimant's employment in and around the week of the 8th to 12th February 2010.

The only independent corroborative evidence heard by the Tribunal was given by the Kitchen Manager who confirmed that the claimant had asked for the morning off and that the fact that the claimant had a court attendance was known to her and she made that fact known to the employer.

There can be no doubt that it would be unreasonable for any employer to deny an employee time off to attend court when a summons for attendance has been issued. Any workplace has to make accommodation for unforeseen and unexpected occurrences whether that be court attendances, hospital attendances or other emergencies.

The employer said he had made the offer of swapping days off so as to accommodate the claimant. The idea was that the claimant would work on his employer's day off and the employer would cover the claimant on the Thursday. This would have accommodated the claimant's need to be in court on the Thursday. To the Tribunal this seems to have been a reasonable solution to the need to be fully staffed every day.

However, the claimant was adamant that he was not given this option and that in fact he worked the Friday, Saturday, Monday and Tuesday without any conciliatory talk between himself and his employer and it is common case between the parties that his employer's initial reaction to the request for time off was met with the statement that if he did not come into work on Tuesday there would be no job for him thereafter.

The onus rests with the employer to establish that the employer has acted reasonably and fairly in the circumstances. There was clearly a heated disagreement between the parties on the morning of the 5th February 2010. On the employer's version of events the claimant had handed in his notice by the end of the day. The Tribunal believes that even if a notice had been handed in, same was only proposed as a result of the row that had preceded it and therefore the employer should have been wary of relying upon it.

The Tribunal cannot know the exact sequence of events as there was so little common ground between the parties. However, the Tribunal does find on the balance of probabilities that the dismissal was unfair where clearly it stemmed from a disagreement which remained unresolved. The Tribunal also finds that the claimant contributed to the situation in that he too made no efforts to ameliorate the situation. The claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the Tribunal awards the sum of €7,000 in compensation.

The Tribunal awards the claimant the sum of €1,060.00 (being the equivalent of two weeks' gross pay) under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The claim is dismissed under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)