

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE

- *claimant*

CASE NO.

UD1162/2010

against

EMPLOYER

- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal

(Division of Tribunal)

Chairman: Mr. P. Meghen

Members: Mr G. Andrews
Mr J. Flavin

heard this claim at Limerick on 13th February 2012

Representation:

Claimant: Mr. Daniel J O'Gorman, O'Gorman, Solicitors, Munster House, 75a O'Connell Street, Limerick

Respondent: Mr Garreth Coyne, Management Support Services (Ireland)Ltd, The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:

Respondent's Case

The Managing Director (hereinafter referred to as MD) gave evidence on behalf of the respondent. He established the company in July 2007 which supplies water to businesses and homes. The claimant commenced employment in January 2008 as a general delivery driver. At this time there were two other employees the office manager and the MD. The claimant was working in the same yard as the respondents premises; the office manager introduced him to the claimant. He agreed to pay the claimant the same wage he was on if he came to work with him.

He gave the claimant terms and conditions of employment which the claimant never signed even though requested to many times.

The claimant was constantly late for work, which was a source of frustration for the respondent.

On numerous occasions he discussed the claimants timekeeping with him and for two to three days the claimant would rectify his timekeeping but then revert back to old ways. He decided to instigate the disciplinary procedures as laid out in the claimant's terms and conditions of employment. He explained that if the claimant did not turn up on time there was no one else to deliver, he had lost customers because of the claimant's lateness. On the 24th October 2008

he formally wrote to the claimant after he had discussed his time keeping with him. At this stage the claimant was still on probation as he had extended his probationary period as allowed within the terms and conditions of employment. This letter states “unless there is a marked improvement in your time keeping we may be forced to let you go”. On the 19th December 2008 he had cause to write to the claimant again due to the claimant taking unauthorised leave. He again extended the claimant's probationary period for a further three months. He did not terminate the claimant's employment at this stage as he was aware that he was getting married the following year. The claimant assured him things would change.

On Monday 5th January 2009 the claimant sent a text stating he would be late for work. He did not turn up for work at all that day. The following day the claimant was late for work and he telephoned the claimant at 9.50am. As a result of the claimant's absence on Monday and his lateness on Tuesday, the deliveries scheduled ran a day late. He met with the claimant that evening and issued him with a final written warning. He issued the claimant with an overtime sheet to be completed on a weekly basis but the claimant never returned these sheets. After this the claimant's time keeping improved but then he slipped back to his old ways.

The claimant took a week off for his stag party. On Monday 7th September 2009 the claimant failed to show up for work. He tried to contact the claimant and the claimant sent him a text saying he would be in for 13.00. The claimant did not appear at 13.00 so he contacted him again and the claimant informed him he would not be in for the rest of the day. It transpired that the claimant was at a funeral, the witness explained he would have given the claimant the time off if he had requested it. He wrote to the claimant on the 8th September reminding him of the final written warning issued to him regarding his attendance on the 6th January 2009 but also informing him that given the nature of his absence at this time he would not be taking further action. The claimant did not heed this letter less than a month later he wrote to the claimant again on the 27th October 2009. The claimant failed to turn up for work and was uncontactable as his mobile was turned off. The claimant explained when he eventually got to talk to him that he had taken his son to the hospital.

The claimant then took some sick days in and around the 3rd December 2009 but when the respondent sought a sick certificate none was forthcoming.

The claimant got married and sought an additional two days leave at short notice which he granted but was annoyed. The claimant was due back on the 21st December 2009, as there was severe weather at the time he started the van at 8.00am and texted the claimant to turn off the van when he arrived in to work. When the witness returned to the yard at 11.00 the van was still running. He tried to contact the claimant but to no avail. The claimant contacted him that afternoon and informed him that he was taking the rest of the week off. He told the claimant that he was not authorised to take this time off and that he would be docking his pay.

He sent a letter to the claimant at his home address on the 22nd December 2009 informing him that he had taken six days in excess of his annual leave allowance. Also outlining that he found it difficult to trust any arrangement with him and that he would be discussing this and other issues with him on his return on the 11th January 2010. He decided to write a second letter on this day to the claimant formally inviting him to a disciplinary meeting on same day; he planned to discuss the following issues:

- Unauthorised absences
- Carrying a third party in the company vehicle
- A speeding fine that the claimant said he would pay

- His claims for overtime

He explained he was very frustrated at this stage with the claimant; he had given him every opportunity to improve.

The claimant was due in on the Monday 11th January 2010, he received a text from him on the Sunday night saying he was too tired and would not be in the next day. He tried telephoning the claimant when he received this, but the claimant did not answer his phone. In frustration he sent the claimant a text along the lines of, if you are not coming in tomorrow don't bother coming in. He also offered to hold the disciplinary meeting later on in the afternoon. He received no response so he wrote again to the claimant on Tuesday 12th January 2010 terminating his employment. This letter was produced in to evidence.

Claimant's case

The claimant gave direct sworn evidence. He never received the grievance procedure and only received his terms and conditions of employment a few months after he had commenced work. In respect of the two letters dated the 12th January 2010 he only received the letter stating that he was overdrawn on his annual leave and did not receive the letter notifying him of his disciplinary meeting. He did think at this stage that there could be a prospect of his dismissal; however he normally dealt with the office manager and not the managing director. When he received the text message telling him not to turn up he thought he was fired at this stage. He was not aware of any disciplinary procedures in place.

Up to the time of his dismissal he did not think his employment in jeopardy. He admitted he had received other letters in respect of carrying third parties in the company van. There was never any formalities at any of the meetings he had with the office manager or managing director. The deliveries were not organised in an efficient manner. He gave evidence of loss.

Under cross-examination he explained that he was constantly fighting for overtime, when he was promised days off he never got them. It seemed that when there was a problem in the respondents he got the blame for it. He was not driving the van the day the speeding ticket was issued. It was always his word against the managing director and the office manager. He accepted that if he did not turn up in time for work, deliveries would be affected and his job could be in jeopardy. Anytime he was asked to go anywhere he did, some nights he would not get home until 1.00am and would be expected in the next morning. The only correspondence he had not received from the respondent was the letter of the 22nd December 2009 requesting him to attend the disciplinary meeting.

He had texted MD from Cork airport on Sunday 10th January 2010, as the weather was very harsh they could not travel home that night. They had travelled the next day and reached Limerick at 16.00. The managing director texted him that day but did not telephone him. He did not know he had a meeting on the Monday, had he known he would have attended.

The managing director had agreed to his three weeks off, however the managing director made up what he wanted to say, and it was his words against his. He had not signed the terms and conditions of employment as he was promised that he could carry his service from the previous company he had worked with when he started with the respondent.

Determination

The Tribunal carefully considered the evidence adduced at the hearing. While there may have been some procedural issues, the Tribunal is of the view that the claimant was given sufficient warnings and was aware that his position was in jeopardy. The claimant behaviour contributed to his dismissal. Accordingly the Tribunal dismiss the claim under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)