

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYEE

*-appellant*

CASE NO.  
UD901/2011

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER

*-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr M. Carr  
Mr P. Trehy

heard this appeal at Dublin on 22nd November 2011 and 10th February 2012

#### **Representation:**

Appellant: Ms Eileen Molloy B.L instructed by  
Richard Black, Solicitors, Beechfield House, Clonee, Dublin 15

Respondent: Peninsula Business Services (Ireland) Limited, Unit 3,  
Ground Floor, Block S, East Point Business Park, Dublin 3

This case came before the Tribunal by way of an employee appeal of the Rights Commissioner Recommendation **ref: r-093445-ud-10/JT.**

#### **Claimant's Case**

The claimant commenced employment with the respondent in 2006 as a general operative. The respondent is a construction company; the claimant reported to the owner's son (SH) if the respondent owner (SC) was not available. The claimant did not have a contract of employment. After the dismissal of another general operative the respondent asked the claimant to take over that role which had two components; general operative and snagger.

The claimant had a normal working relationship with SC unless he was under pressure, then he would shout a lot. The claimant and SC had a number of arguments as SC would give the claimant a job to do and then his son SH would give the claimant a different job to do that would be more important than SC's instructed job. SC would return and get angry that the claimant had not done as instructed and would say 'don't mind SH'. On the final occasion the respondent said, 'if you can't listen to me we'll have to part ways.'

On the 5<sup>th</sup> of March the respondent asked the claimant how he planned on laying a wooden

floor. The claimant responded saying he would start in the dining room, SC responded saying to the claimant, *'you're acting the b\*\*s'*, the claimant said that he was not. The claimant then said that if the respondent wanted him to lay wooden floors he would have to pay him more as he is not a carpenter. The respondent then said, *'you can go home.'* The claimant left and returned but again was instructed to go home. The claimant was approached outside and advised to stay as there was no work anywhere else but the claimant said, *'I can't work anywhere with SC'* as he was difficult to work with. The last words the respondent said to the claimant was, *'you are going home.'*

As the claimant didn't hear anything further from the respondent he rang requesting his P45 and his redundancy. The P45 was ready on Friday and the respondent stated that he would look into the redundancy. SC reverted to the claimant stating that as the claimant had resigned he was not entitled to redundancy; the claimant responded saying he was told there was no more work for him, to which SC replied that he meant there was only no work that day. The claimant did have a conversation with SC about returning to work. On the 5<sup>th</sup> of March the claimant did have 'tea' with SC, another son (CC) and another person MM. The reason the claimant asked for the pay rise is that he discovered that another general operative, CC was being paid more.

The claimant was not offered his job back during a conversation on the 16<sup>th</sup> of March and on the 25<sup>th</sup> of May the respondent only left a message for the claimant to contact him.

The claimant borrowed money (€12,700) from the respondent when he was purchasing his house. The repayment was deducted from the claimant's wages on a weekly basis.

On re-examination the claimant confirmed that he was taken on for "snagging" on houses and not for carpentry work. He had a good relationship with the respondent's sons at the start of his employment and the difference in pay was not the reason for the row.

On the day of dismissal, he was asked to lay wooden floors. As he was not qualified, he asked for a pay rise. Before he asked for the pay rise, SC asked him how he was going to start the job.

The claimant said he would start in the kitchen and SC said he was "acting the boll\*\*ks" and that they needed to work together. It was then he asked for the pay rise. SC told him that he gets enough pay and told him he could go home and that there was no work for him on that site.

The claimant then went for a smoke and when he came back both SC and CC had started the work. The claimant said he would do it but SC said go home. The claimant took it that he was dismissed and did not receive a phone call after that. The claimant subsequently rang for his redundancy and P45 and was told there would be no redundancy. He was not asked to return to his employment but he would have returned if he had been asked.

### **Respondent's case**

Giving evidence, SC stated that the claimant was employed as a labourer in 2006. He told the respondent that he made furniture in the past. The claimant was one of the best workers the respondent ever had. When the claimant had a shortfall of €12,700 when he was purchasing a house, the respondent gave him a loan in February 2007 and the claimant said he would repay €250 per week. The money was never fully paid back and had an outstanding amount of €3,800 when the claimant left his employment.

SC said that he put the claimant and CC laying the floors and when he returned very little of the

work was carried out. SC raised his voice and said the floor needed to be put down. The claimant said he would do the cleaning and SC told him to go home. SC completed the floor with CC. The claimant said he would be looking for his redundancy. SC noted in his diary that the claimant had refused to work with CC. The claimant had stated that CC was on a higher rate than he was. On 16<sup>th</sup> March 2010 SC telephoned the claimant with a view to keeping him as an employee going forward but the claimant was not interested. SC stated that he did not dismiss the claimant and had expected him to cool down.

In cross-examination, SC confirmed that the claimant was recruited as a “snagger” and not as a carpenter. He denied he told the claimant that there was no work on site or that he was abusive on the phone in March 2010. The claimant drove a forklift but not on the respondent’s instruction.

In reply to the Tribunal, SC said that the reason the claimant did not want to do the job was because he wanted to do it for cash in the evening. SC tried to resolve it with the telephone call on 16<sup>th</sup> March 2010. Evidence pertaining to the claimant’s loss and efforts to mitigate the loss was given to the Tribunal.

### **Determination**

Having considered all the evidence, the Tribunal is of the view that the claimant was not unfairly dismissed. He requested his P45 from the respondent. There was an incident in March 2010 when the claimant refused to carry out an instruction given to him by his direct employer. After a heated exchange, the respondent told him to go home. The claimant rang on 11<sup>th</sup> March 2010 seeking his P45 and his wages, which were due the next day. The respondent rang the claimant on 16<sup>th</sup> March 2010 with a view to meeting up to discuss matters and evidence was given that this conversation took approx. six minutes. The claimant told the respondent to speak to his solicitor.

While it is clear, that on occasion, there were heated exchanges between all of the parties, it is also clear that the respondent assisted the claimant with a loan to pay the stamp duty on his house on very flexible terms. The Tribunal does not accept that the claimant was in any way coerced into buying the house. Accordingly, the claim under the Unfair Dismissal Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_

(CHAIRMAN)