

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE

- *Claimant*

CASE NO.

UD341/2011

MN330/2011

Against

EMPLOYER

- *Respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr J. Browne
Ms S. Kelly

heard this claim at Portlaoise on 12th April 2012

Representation:

Claimant: Mr Aidan Byrne

Respondent: Mr Bernard O'Keeffe, HR Department Limited, 110 Canberra Road, Charlton,
London, SE7 8PE, England

The determination of the Tribunal was as follows:-

Dismissal as a fact was in dispute.

Claimant's Case

The claimant told the Tribunal that he worked as a part time shop assistant/till operator for the respondent company since May 2009. On 1st December 2011 he reported for work as normal and was told by another member of staff that he was not on the roster. He proceeded to check the roster and his hours of work for the week had been removed. He then looked to speak to his manager who was on the shop floor. He asked him why he was not on the roster and was told that Mr. H (regional manager) no longer wanted him near the tills or to see his name on the roster anymore.

He asked his manager was he being dismissed to which the manager replied that he still worked for the respondent company but he could not envisage him getting any further hours. The claimant was embarrassed by the fact that this conversation was taking place on the shop floor. He asked his manager about receiving his holiday pay and then he went home. The claimant has not been in the shop since as he is embarrassed by the fact that other members of staff may think that he was taking money from the tills.

Two weeks later the claimant contacted his manager and asked him where he stood. He was told that things were still the same but people change their mind and he might be able to give him some hours in a few weeks time. He was told that if he was given hours of work it would be for the shop floor and he would not be operating tills. The claimant asked for his P45.

Four weeks later the claimant's P45 had not arrived. He contacted head office and spoke to someone in payroll administration who told him that they had not received a request for his P45. He was told that they would send his P45 directly to his home address and he received it about two weeks later in late January.

It was the claimant's understanding, that he would not be receiving any more work from the respondent company so he signed on for social welfare benefits.

The claimant told the Tribunal that during his employment he had been officially reprimanded in February 2010 in respect of a till shortage that had occurred as a result of a "drive-off". When someone leaves the forecourt without paying for their fuel it is called a "drive-off". The claimant signed off on the written warning he received in respect of this shortage. The claimant was not subject to any other disciplinary actions from the respondent during the course of his employment.

The claimant explained that his duties varied but he mainly worked on the tills and while working on tills another member of staff would also have access to your till.

During cross examination the claimant explained that he did not know for definite if he was dismissed from the respondent company because he could not get a clear answer. The claimant explained that he made himself available for work and contacted his manager looking for hours but could not get a definite answer. The claimant was left with no option but to seek his P45 because he was not getting hours and needed to actively look for alternative work. He would not have resented working on the shop floor and would have been delighted to receive any kind of work from the respondent.

The claimant confirmed that he had numerous discussions with his manager during his employment in respect of his work on the tills. His manager would come to him with queries about his till balance and ask him to explain any discrepancies. These queries took place with all staff that worked on tills because it was their duty to help the accountant to figure out why there may be shortages.

The claimant was not aware that there was a grievance procedure in place and felt that contacting his manager directly was the best way to deal with the situation.

Respondent's Case

The Tribunal heard evidence from DW, the claimant's manager in the respondent company. He told

the Tribunal that there were problems with the claimant's tills and cash differences and he spoke to him to tell him it could not continue. DW did not want to go down the route of a disciplinary procedure with the claimant and wanted to have a quiet word with him instead.

On 1st December DW was heading out of the shop to collect bread. He saw the claimant coming across the forecourt and he asked him where he was going as he was not rostered to work that day. He told the claimant that he could not have him working on the tills as he was making too many mistakes. He offered the claimant a middle shift dealing with deliveries. He knew the claimant was going on holidays and told him to contact him when he returned. He did not receive a direct call from the claimant.

DW told the Tribunal that he never dismissed the claimant and he still remains on the rosters. He never completed a termination form because in his opinion the claimant never left and if the claimant wanted work all he had to do was go to DW and request it.

All members of staff were flexible and on some occasions staff from the delicatessen would need to provide cover to the staff operating the tills.

DW never got an explanation from the claimant about not returning to work. He never treated the claimant differently to other employees nor did he harass him. During his employment the claimant never raised any formal grievance with DW. He left the onus on the claimant to come back to him for hours of work but he never did and he only became aware of the claimant's request for his P45 when he received notice of the claimant's claim to the Tribunal.

During cross examination DW confirmed that he spoke to the claimant in respect of mistakes while operating the tills. He never contacted the claimant about returning to work because he left the onus on the claimant. He did agree that maybe he should have rang the claimant. He maintained that the hours he offered to the claimant were for the middle shift that deals with deliveries. The claimant did not refuse these hours but said that they were no good to him.

DW confirmed that nobody took over the hours of the claimant as all staff are flexible the claimant's hours were shared out among the remaining staff.

Determination

Having considered all of the evidence adduced at the hearing the Tribunal is of the view that in effecting a halt to the claimant's rostering undue pressure was put on the claimant and the claimant regarded himself as dismissed. No fair procedures were observed by the respondent in communicating to the claimant his removal from the roster. More importantly the company made no effort whatsoever to explain to the claimant why they took the steps they did in removing him from the roster or why they were dissatisfied with his work performance. The Tribunal prefers the evidence of the claimant to say that the claimant was left in isolation and attempted to get in touch with his manager.

Accordingly, the Tribunal finds that the claimant was unfairly dismissed from his employment and awards him the sum of €8,700.00 compensation under the Unfair Dismissals Acts 1977 to 2007.

The Tribunal awards the claimant €260, being the equivalent of two 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)