

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE -*Claimant*

CASE NO.

UD968/2010

against

EMPLOYER -*Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Browne
 Ms S. Kelly

heard this claim at Wexford on 15th November 2011 and 17th February 2012

Representation:

Claimant: Mr. Eric Furlong, Coghlan Kelly, Solicitors, Trinity
 Chambers, South Street, New Ross, Co Wexford

Respondent: Finn & Doyle, Solicitors, 1 Johns Gate Street, Cornmarket, Wexford

The determination of the Tribunal was as follows:

Background:

The respondent operates a motorcycle centre in Wexford town. The claimant was employed by the respondent since January 2002 and enjoyed a good working relationship until 27th December 2009 when the claimant rang the respondent and informed him that an accident had occurred while he was driving his girlfriend's car. The respondent told the claimant that he was not insured to drive his girlfriend's car under the business insurance policy.

As the dismissal itself was in dispute, it was agreed that the claimant's side would give evidence first.

Claimant's case:

The claimant gave evidence that he had been a customer of the respondent, buying parts for his motorcycle. The respondent offered him a job and he accepted. The respondent advised the claimant that it would be better if the claimant was covered under the respondent's insurance. The insurance payment was taken on a weekly basis from the claimant's wages. In late 2009 the claimant's hours were reduced to a three-day week as business was slow.

In December of 2009 the claimant had an accident while driving his girlfriend's car when the car skid on some ice. He contacted the respondent the day after the accident and asked him if he should ring the insurance company. The respondent said he would do it. When the claimant went back to work around Thursday 7th January 2010, the respondent asked him why he had produced the garage insurance as he was not insured to drive his girlfriend's car on that policy. The claimant stated that he had been told he could drive any vehicle.

The respondent asked the claimant to bring his girlfriend's insurance details, along with the log book and tax certificate. The claimant gave the respondent the tax book, NCT certificate and insurance disc from the car window. When the claimant went to work on Friday 8th January 2010 the respondent asked him for his girlfriend's insurance certificate and documents. The claimant told the respondent that his girlfriend's insurance company told her not to hand them over. The respondent then told the claimant not to come back without the documents and asked him to hand over his keys and informed him that he was no longer insured on the company's insurance. The respondent told the claimant that he could no longer be trusted and that he was "pulling the wool" over the respondent's eyes. The claimant arranged for somebody to come and collect him from work that day as he felt terrified after the respondent made a threatening comment to him. The respondent did not contact him after that until the claimant received a solicitor's letter dated 21st January 2010 seeking certain documents and asking why the claimant had not returned to work. The claimant felt that he could not go back to work given the way he had been treated on 8th January 2010.

Under cross-examination, the claimant confirmed that a criminal case had followed the accident and it was found that he had not been insured under the company insurance. He had been told by the respondent that he was insured to drive anyone's car. He has not been working since the dismissal and is in receipt of social welfare. The claimant denied that both respondents rang him after 8th January 2010. He also denied being aggressive on the 8th January 2010.

Under re-examination, the claimant stated that he was told by the respondent that he could drive any vehicle. He confirmed that the date of termination of the 2nd January 2010 on the social welfare form was an error. The claimant gave evidence of various job applications.

In reply to the Tribunal as to why he thought the respondent wanted his girlfriend's insurance certificate, the claimant stated that he felt the respondent wanted to make a claim under her insurance.

Giving evidence on the second day of hearing, the claimant's brother stated that he received a telephone call from the claimant during the afternoon of the 8th January 2010. The claimant asked his brother to drive him home, as he did not have use of a car. The claimant later told his brother that there had been an argument with his employer about an insurance certificate and that he "had to get out" due to the disagreement. The claimant's demeanour was one of shock and he told his brother that he could not return to his employment unless he

brought the insurance certificate to his employer.

Respondents' Case:

The respondents gave evidence that the claimant was employed for some nine years. The working relationship was described by them as excellent and the claimant was described as an excellent worker. Mr. H confirmed that the claimant had telephoned him on the 27th December 2009 and informed him that an accident had occurred while driving his girlfriend's car which had skid on some ice. Mr. H told the claimant that he might have a problem as he was not insured on the business policy to drive his girlfriend's car.

Mr. H outlined to the Tribunal that the claimant was employed on the business' insurance policy which meant that the claimant was insured to drive any car that was in the respondents' custody or control for business purposes. The respondents later became aware that the claimant had produced their insurance details to the authorities.

The claimant was due to return to work on 7th January 2010 but he did not attend until the 8th January 2010. In or around 3pm on that date Mr. H received a telephone call from an insurance adviser informing him that the respondents' insurance policy would not cover the accident as the claimant had been driving his girlfriend's car. As a result of this telephone call Mr. H told the claimant that he had been instructed to request a return of the respondents' insurance certificate and he also asked the claimant to provide his girlfriend's insurance details. The claimant more or less told Mr. H this would not happen as his girlfriend had been advised by her insurance company not to hand over her insurance details. The claimant said that he needed his job and Mr. H told him that there was absolutely no question of his job being in jeopardy. Mr. H denied that he had told the claimant that he could not return to work if he did not bring in the insurance certificate. He acknowledged that he had asked the claimant for the respondents' insurance certificate as he did not know what the claimant might do next having already produced it to the authorities. He confirmed in or around 5.30pm he told the claimant that he was taking back the respondents' car as the claimant was annoyed and he felt that the claimant could have an accident or damage the car while driving home. The claimant did not return to work after that date. Attempts were made to return the claimant to his position but without success.

Giving evidence Mrs. H stated that on the afternoon of the 8th January 2010 she observed that the claimant was very agitated and angry. She thought the fact that he was not covered by insurance for the accident was bothering him. She was also aware that Mr. H had taken the respondents' car from the claimant for fear of his having an accident and she offered to bring the claimant home. Mrs. H first realised that the claimant was not returning to work when she received a letter from his solicitor. She made attempts to contact the claimant as she wanted him to return to work. The respondents' solicitor also wrote a letter outlining that the claimant's position was still available to him.

Mrs. H outlined an incident which had occurred in 2006 when another employee was in an accident while driving his own car. At that time Mrs. H was of the view that an employee was covered under the respondents' insurance policy when driving their own vehicle but when the claim form was submitted the insurance company said that the employee was not covered as the car he was driving at that time of the accident was not in the respondents' name. After this incident Mrs. H verbally clarified this matter with the other employees, including the claimant. Every now and then she brought it to the employees' attention that to be covered for insurance

the vehicle must be in the respondents' name. The claimant's vehicle was also put into her name for this reason so that he would have insurance cover. Although from time to time she observed the claimant driving vehicles that were not in the respondents' name she presumed he had his own insurance for such vehicles.

Determination:

Having considered the evidence adduced at the hearing the Tribunal by majority decision finds that the claimant left his employment with the respondents because he was upset about what he perceived to be the respondents' unwillingness, rather than their inability, to assist him with the difficulties he found himself in due to lack of insurance cover. The Tribunal finds that this holding is supported by the fact that any efforts to maintain the claimant's employment *statusquo* were made by the respondents. The Tribunal thus finds that there was no dismissal actual or constructive. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____
(CHAIRMAN)