

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE – *claimant*

UD2048/2010

RP2790/2010

MN1994/2010

WT909/2010

against

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 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. M. Levey BL

Members: Mr. F. Moloney
Mr. P. Woods

heard this claim in Dublin on 9th March 2012

Representation:

Claimant(s): No legal or trade union representation

Respondent(s): No legal representation

Respondent's Case

PMM set up the business with his wife June 2004. It is a small business and he employed two service engineers. PMM was at one time an apprentice to the claimant and when he employed the claimant he was happy to have him. The claimant received a contract of employment which set out his pay and expenses. In the contract it stated lunch expenses were only available if the job was more than ten miles from the company location.

Everything went well with the claimant for the first few years until 2007 when the claimant began putting in receipts for expenses he should not have claimed. On the 4th July 07 the

claimant stayed in a hotel and claimed €36.35 on bar food.

In August 07 he gave the claimant a memo advising that refrigerant gas cylinders must be recorded and returned to the suppliers when empty. PMM could not find one that the claimant had completed.

On the 7th March 2008, the claimant was working in the office. He gave in a time sheet and an expenses sheet for which he was not entitled to. The respondent employs a lady who does the payroll and expenses. PMM rarely looked at these. Time sheets and expense claims are submitted weekly and are used to invoice their customers and to pay the employee's wages.

On the 14th March 08, the claimant lodged an expense claim valued €39.30 which included a bottle of wine. On the 10th April 08, PMM sent a memo to the service engineers stating that the respondent could no longer overlook expense claims.

On the 30th May 08, the claimant lodged an incorrect expense claim for €39.20. On the 24th June 08, the respondent sent another memo to the service engineers requesting service reports to be signed. The claimant submitted many unsigned reports following the memo. If a customer queried a service and the report was not signed, they could dispute the hours charged. Getting customers to pay was getting harder due to the downturn in the economy.

On the 19th February 2009, another memo was sent to the service engineers. When a chiller is commissioned, a job-sheet must be completed. If something happens to the chiller, this job-sheet shows it was commissioned properly and it was not the respondent's problem. The claimant never filled in one of these during his employment. If they are not completed the warranty may be invalidated.

On the 5th October 09, the claimant was given a final written warning. The claimant was in an accident which involved an electrical blow-out. The motor fan on a chiller was down to earth and the claimant had reset the overload. When he went to start the motor it caused a blow-out. It could have been avoided if the claimant had checked the earth first. PMM was in London when it happened and the claimant had to go to hospital for a check- up.

On the 4th November 09 the claimant was on a site. He phoned the office to say a chiller was short of gas. The claimant knew he should have brought gas with him. The claimant wasn't interested anymore.

On the 10th November 09 the Service Manager had a disciplinary meeting with the claimant and gave him a verbal warning.

On the 2nd March 2010, the claimant was given another written warning where the respondent had to pay extra expenses to the claimant which he could have avoided.

Following the warning the claimant went to Galway to work and embarrassed the respondent by his actions. The claimant was working with other fitters from other businesses and was asking them how to do simple jobs. This work was for a trade customer who then stopped buying from the respondent.

The claimant was asked to service a chiller in a supermarket and told PMM he could not do it as there was no scaffolding. PMM went to the site and discovered that one side of the chiller had scaffolding and the job could be completed.

PMM went to the claimant in the canteen and asked him if wanted to work for the respondent. He told the claimant if he did not want to work he should leave. It was a small company and they could not carry him.

PPM drafted a termination of employment letter for the claimant and left it in the office. He sent a text to the claimant regarding the dismissal and he then went on holidays. He didn't want to leave it hanging while he was away.

During cross-examination PMM said he signed off on expense claims. He is on the road all of the time and has a stack of papers when he gets back. He cannot go through everything.

He did not want to get rid of the claimant. He had asked the lads to help him but the claimant didn't do his job properly.

He told the claimant he could not have bottles of wine with a meal.

CD worked in the sales section. He was the first line, on the phones. He remembered customers saying they did not want the claimant to service their chillers. He went to Galway during his first month of his employment with the claimant to get a feel for the work. The claimant was asking other fitters how to do this and that. It was awkward. When he went back to the office, the respondent received a complaint from the contractor. He had been there and had to explain what had happened to PMM.

RA was employed as a Service Manager in June 2009 to look after the service department. He had a good relationship with the claimant. He gave the claimant a written warning following the electrical blowout. He went to the site to investigate the incident and found loose connections and old connectors. The claimant had been the engineer on that site for a few years and he would have expected him to change the connector's years ago. It was poor workmanship. If he had tested the motor first, the incident would not have happened.

At the meeting he explained to the claimant that the work was below standard. The claimant did not accept the written warning. He worked with PMM for eight months. He found him very fair and it was a very good place to work.

Claimant's Case

The claimant was on a three day week, Tuesday, Wednesday and Thursday. He would ring on Monday or Friday for his jobs. He got a text to say his job was gone. He received a letter on the 16th August 2010 dated to 19th July. He was let go on the 29th July.

The respondent cut the price for jobs and only allowed thirty minutes for a service. Most companies allow a day. The respondent wanted to put signs on the side of his van. His contract of employment does not mention this.

The company did not report the incident to the HSA. He did and was out sick for three weeks. On the day he returned he was handed a safety statement. The company had refused to pay him sick pay.

EH was the first Service Manager and retired due to ill health. He said the incident should have been investigated by an independent person. He said if a fan trips you reset it. If it trips again you check it. There was nothing wrong in what the claimant had done.

CH is a contractor and used to work for the respondent. The customers were asking where the claimant was. It is very easy to be called a bad engineer because of personal differences on site.

Determination:

The Tribunal carefully considered all of the evidence adduced by the parties. The Tribunal is satisfied that the claimant was dismissed by the respondent in circumstances where there were justifiable grounds for such dismissal. The claimant was given warnings about his slipshod performance regarding filling in job sheets and incorrect expense claims. His work was not up to the standard expected and he was given the opportunity to improve but this did not occur.

Accordingly the Tribunal finds that the claims under the Unfair Dismissals Acts 1977 to 2007, the Redundancy Payments Acts, 1967 to 2007, the Organisation of Working Time Act 1997 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fail and are hereby dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)