

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

-claimant

CASE NO.
UD1047/2011
RP1401/2011
MN1164/2011
WT429/2011

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: Mr. P. O'Leary B. L.

Members: Mr G. Mc Auliffe
Mr F. Keoghan

heard this claim at Dublin on 29th August 2012

Representation:

Claimant:

Respondent:

Respondent's Case

The respondent is a small business that purifies, bottles and sells water. The claimant was employed in the warehouse looking after stock and bottling. The claimant was given his Terms and Conditions of Employment as part of his contract when he commenced work. As it was a new business the claimant was contracted for 30 hours per week although there was not enough work for 30 hours a week. It was envisaged that as the company grew the work would be available for the claimant. In the interim the claimant was paid a flat salary per week and the deficit in the 30 hours the claimant was paid and contracted to work would accumulate for the claimant to work when the respondent got busier.

The claimant received a number of warnings as he 'rarely came in on time'. The claimant would often text the respondent on a Sunday evening to say he would not be in work on Monday morning. This behaviour led to several warnings regarding his time keeping and frequent absences. On one occasion the claimant returned home to Poland for a

week and on the expected return date to work he did not appear and instead came back after a second week.

On the 21st of June 2010 a letter was issued to the claimant after a meeting confirming that he had a total shortfall in hours worked to date of 6 days and 25 minutes. The claimant was issued a second verbal warning on the 5th of July 2010 for timekeeping and failure to return the broadband modem. On the 7th of July the claimant asked for the morning off work but said he would return in the afternoon, later that day he sent a text saying he was at home and wouldn't be coming to work.

The respondent owner and two staff including the claimant worked in the company. The other staff member was absent on long term sick leave from 2010 so it was only the claimant and respondent working. On Monday morning the 7th of March the respondent received a text to say the claimant did not want to do deliveries that day but would work in the warehouse instead. There were no issues with the company van that would hinder the claimant driving it. The respondent replied saying Monday deliveries are crucial and he has to do them; the claimant said 'in that case I'm taking a sick day'. The claimant was 2 hours late on the 9th of March. On the 10th of March the claimant and respondent had an argument resulting in the claimant being sent home. As a result of the claimant's behaviour the respondent decided to escalate the disciplinary process. As the claimant was critical to the company this action had not been taken sooner.

The respondent told the claimant on the 9th of March that there would be a disciplinary meeting and wrote to the claimant on the 14th of March 2011 requesting him to attend a disciplinary meeting on the 16th of March and invited him to bring a representative if he wished. The meeting was held and the following allegations were put to the claimant;

- 1. For the third time in 15 months the shutter door was left open with the drain hose jutting out underneath posing both a security and a health and safety risk as we are classed as food processing.*
- 2. You are further aware that the shutter door closing on any other object causes the door to be damaged, which then has to be repaired at a cost of €200.00.*
- 3. That your time/work diary was only filled in until 2.45pm, which is coincidentally just after when I had left and this is not the first occasion where you have left your post unattended without authorisation.*
- 4. Despite being paid for the day in full you left work without authorisation and never returned to complete same.*
- 5. By leaving the warehouse early you delayed future deliveries as you did not finish the necessary tasks that were required to be completed and this has further cost the company.'*

The claimant responded to the allegations.

By letter of the 18th of March 2011 which included a summary of the disciplinary meeting the respondent informed the claimant that he was being dismissed as 'the company has lost trust and confidence in you.' The claimant was advised of his right to appeal this decision to a third party.

Claimant's Case

The claimant was employed on €250.00 per week. He understood that as long as his work 'got

done' it did not matter what hours he worked. On the occasion he went home to Poland he missed his returning flight on Sunday but was home on Monday to work on Tuesday; it was not an extra unauthorised week off. With regard to the allegation of leaving the hose out, there is no gap when the hose is left under the shutter. The claimant accepts that he did not return to work as arranged after taking the morning off work.

The claimant had previously been stopped by the Gardaí for not having a D.O.E. or tax on the company van. He had been warned that he, as the driver, was responsible for the van. This is why he refused to do the deliveries on Monday the 7th of March. On Tuesday the 8th of March the respondent told the claimant 'you're not working here anymore.' The claimant said 'you can't throw me out for no reason; there was no tax or D.O.E. on the van.' The claimant did not appeal the decision to dismiss him as he did not want to work with the respondent anymore.

The claimant gave evidence of his loss and his attempts to mitigate his loss.

Determination

Having carefully considered the evidence adduced the Tribunal determine that the claimant's dismissal was technically unfair due to the failure of the respondent to implement the procedures for dismissal in the months prior to the date of dismissal. The claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and the claimant is awarded €5,000.00 in compensation. The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 succeeds and the claimant is awarded €519.00 being the equivalent to two weeks' pay in lieu of notice.

The claim under the Redundancy Payments Acts 1967 to 2007 does not arise. No evidence was adduced in relation to the claim under the Organisation of Working Time Act 1997 and this claim is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)