

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD634/2011, MN684/2011

against

EMPLOYER

Under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Mr D. Hegarty
Mr D. McEvoy

heard this claim at Cork on 25th July 2012

Representation:

Claimant : Ms Emer O'Callaghan Noel Power, Barry M O'Meara & Son, Solicitors,
18 South Mall, Cork

Respondent : Mr Paul Scannell B L instructed by
Ms Jane O'Sullivan, Murphy Long & Taaffe, Solicitors, Lower Kilbrogan Hill,
Bandon, Co. Cork

The determination of the Tribunal was as follows:

This matter came before the Tribunal on the 25th of July 2012. The matter comprised of claims under the Minimum Notice and Terms of Employment Acts and the Unfair Dismissal Acts. The dismissal was not denied.

Respondent's Case

The retail manager of the Respondent company gave evidence on its behalf. He described that the company is a retail electrical products business who offer a six day delivery to customers. It has three full-time drivers and two dispatch personnel. They cover the Munster area. The Claimant was a driver/delivery man who had been employed by the company for about three and a half years. Drivers generally work 9 to 5 including Saturdays and are paid overtime after five o'clock. On Saturday there is normally one driver on duty who does deliveries, generally close to the shop. The goods are prepared by the dispatch staff and the driver would be given a manifest which he checks before proceeding to do his deliveries. The witness's evidence was that every

day there would become deviation from the plan as additional customer's requirements would have to be met. Flexibility is required and Saturdays generally are more difficult because of the fact that there is only one truck working on Saturdays.

The issue that led to the Claimant's dismissal occurred on the 5th of February 2011. A customer called requesting an urgent delivery. The witness asked the office administrator to request the Claimant who had gone out on his delivery run to come back to the shop, but he refused. The witness told the administrator to phone again as it was important but again the Claimant refused to return. Finally, the witness himself telephoned the Claimant and asked him to return to pick up the delivery. The Claimant said he was not coming back. The witness told him about the significance of what he was saying but he insisted that he was not coming back. Ultimately, the Claimant returned when his deliveries were done. The Claimant told the witness that he "wanted to teach them a lesson" (referring to the sales staff making unreasonable promises to customers), and that he "didn't care", if the matter was reported to personnel. On the following Monday a meeting was called between the Claimant and the person performing the HR role and the witness. The Claimant again repeated that he didn't care what action they took. The managers made a recommendation to their General Manager that he be dismissed. Under cross examination the witness acknowledged that they had not complied with the company's written disciplinary procedures in the manner that they dealt with the Claimant. It was conceded that the Claimant on his return on the Saturday offered to do the delivery, but that it had already in fact been done by another person. The witness acknowledged that they did not give the Claimant anything in writing in relation to his dismissal and his dismissal was communicated to him by telephone and his P45 was sent to him in the post.

Claimant's Case

The Claimant gave evidence on his own behalf, he said that he had no written contract of employment nor was he aware of any disciplinary procedure. The only general instruction that he had was from his dispatch manager, that he should not do deliveries that were not on the manifest. He said that he picked up the manifest and checked his load and departed. At 11.30 a.m. on the 5th of February 2011 he received a call from the administrator asking him to do a delivery in Glanmire. He was near Blarney, a considerable distance from the shop, at the time. At that stage he had phoned the customers to whom he was committed and felt that he could not break the arrangements. He decided to decline the request as he felt that he couldn't manage all the deliveries in the time allowed. He said that he would have done the delivery if he could. He received a second call, and ultimately a third call from the sales manager. He acknowledged that the sales manager said that it was important and that he had to do it, and he acknowledged that he did respond by saying "I don't care". He made his deliveries and returned to the shop where he reported to the sales manager and offered to do the delivery at that stage. It had been done already however. He went to work as normal on the following Monday and was in the process of making ready his van when he was called to a meeting which was attended by the retail manager and the HR manager. They discussed the events of Saturday and he was told that it would be a matter for the general manager as to whether he would "stay or go". He was surprised as though he expected that the meeting was going to be about Saturday he did know that it was a disciplinary meeting. He worked a normal day on Monday and again on Tuesday. He was off on Wednesday but he had a phone call from the general manager who told him that he was being dismissed because of the events of Saturday. He never received a written confirmation and subsequently he received his P45 in the post. On the Thursday he went to see the general manager and asked him if he could keep his job and he asked the general manager to reconsider the situation but the general manager said that it would be better for everyone if he

went. No one mentioned that he had any right of appeal. He acknowledged that he had apologised to the sales manager for his attitude on the Saturday. He experienced considerable financial hardship because of his dismissal.

Determination

The Claimant in this case acknowledged that he refused instructions from his line manager. In the ordinary course of events the Respondent Company, would have been entitled to take some form of disciplinary action against him as a result. The Tribunal has been presented with the Respondent's own policy manual. Appendix 1 of the manual sets out its disciplinary policy and procedure. The Tribunal are satisfied that the Respondent did not comply with its own policies in relation to the manner in which it disciplined the Claimant.

Furthermore, it has been contended that the refusal to carry out the instruction amounted to gross misconduct. The Tribunal are not satisfied that this event amounted to gross misconduct.

In the circumstances the Tribunal finds that the procedure adopted by the Respondent company was unfair and consequently the dismissal was unfair.

The Tribunal further finds however that Claimant by his words and actions contributed to his own dismissal.

The Tribunal finds that compensation is the appropriate remedy, and taking account of the Claimant's contribution, that the appropriate award is €15,000.00 in respect of the claim under the Unfair Dismissals Acts, 1977 to 2007.

In addition the Claimant is entitled to notice payments amounting to €1,000.00 and the Tribunal makes an award in this sum under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd) _____
(CHAIRMAN)

Respondent's Case

Claimant's Case

Determination

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

