

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE
- *Claimant*

CASE NO.
UD2463/2010
MN2407/2010

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. T. Ryan
Members: Mr M. Carr
Mr F. Barry

heard this claim at Trim on 25th September 2012

Representation:

Claimant: Mr. William Joyce, Business & Commercial, Solicitors, 32 Lower Leeson Street, Dublin 2

Respondent: Ms. Catherine Day, Peninsula Business Services, Unit 3 Ground Floor Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant told the Tribunal that he worked for the respondent company from June 2009 installing electric motors and carrying out civil engineering works. On 20th June 2010 the claimant broke his left foot and could not work for a number of weeks. He received a phonecall from CM, director of the respondent company, who informed him that they could not hold his position open for him as they needed to have the work completed. The conversation got heated and they hung up.

The next contact the claimant had from the respondent company was a call from JT, another director, who told him to ignore what CM had said. The claimant made a number of calls to JT during his absence and was assured that his job was safe.

The claimant was certified fit to return to work on 27th September 2010. He phoned JT who

told him that they would contact him in one week's time. On 1st October 2010 the claimant called the respondent company again and was told to leave things for another week because there was no work. On Tuesday 5th October the claimant made another call looking for an update and was told to come in to the office for a meeting on Wednesday 6th October.

The claimant met with JT and CM on 6th October 2010 and they informed him that there was no work within the company on the civil engineering side. They offered the claimant a sales role which he declined. The claimant was told that if he did not want to be sales rep there was no work for him within the company. At the end of the meeting the claimant received his P45 and outstanding holiday pay.

During cross examination the claimant denied that he was offered sales work in addition to reduced groundworks / civil engineering. The work offered was all commission based and the respondent company wanted the claimant to rent a van from them.

The claimant confirmed to the Tribunal that he did not submit sick certificates to the respondent during his absence nor did he receive any correspondence from the respondent enquiring about his intention to return to work.

The claimant maintained that when he endeavoured to return to work in October his work was being carried out by a previous employee, EB, who had returned from Australia. The claimant told the Tribunal that EB recommenced working for the respondent company approximately one week after the claimant's accident.

Respondent's Case

The Tribunal heard evidence from JT, the technical director within the company. JT received a phone call from the claimant on 21st June 2010 to say that he had broken his leg. He had no further contact with the claimant until the Friday before he was planning to return to work in October 2010.

While the claimant was absent from the respondent company the work load had diminished. JT met with the claimant on 6th October 2010. The claimant was offered "50/50" work between sales and installation. It was proposed that the claimant would install whatever he sold. The claimant was offered commission on top of his standard rate of pay but he told the respondent that it did not suit him. JT was surprised by this but the claimant said he had received another offer of work and would take that instead. The meeting ended amicably and the claimant was given his P45.

During cross examination JT confirmed that the company did not have any policies in place in respect of long term illness nor did he request medical certificates from the claimant during his absence. JT did not agree that the claimant contacted him during his absence to update him on the situation. He disputed that he received one week's notice from the claimant of his intent to return to work.

JT confirmed to the Tribunal that the respondent company hired EB, as a replacement for the claimant, after the claimant left the respondent company.

CM, managing director of the respondent company told the Tribunal that he was present at the time of the meeting on 6th October between JT and the claimant. He was surprised by the

claimant's refusal of the offer put to him. CM explained that the respondent company still required employees to carry out maintenance and repairs and groundwork. They wanted someone to carry out the sales work in addition to the building work.

During cross examination CM denied contacting the claimant during his absence to inform him that the respondent company could not hold his position open for him.

CM confirmed that there was no policy in place at the time of the claimant's absence in respect of long term illness and submitting medical certificates. CM never requested medical certificates from the claimant during his absence. The claimant was not provided with a written offer in respect of the new position nor was he offered work as an independent contractor for the respondent company.

Determination

Having listened to the evidence adduced by both parties at the hearing the Tribunal finds that there was a conflict of evidence in respect of a number of issues. It was agreed that the company failed to have proper procedures in place and based on the totality of the evidence adduced at the hearing the Tribunal awards the claimant the sum of €2,000.00 under the Unfair Dismissals Acts 1977 to 2007. The Tribunal awards the claimant €480, one week's wage, in respect of his statutory entitlement under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)