

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE – *claimant*

UD1834/2010

against

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. M. Gilvarry

Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this claim in Letterkenny on 9th February 2012

Representation:

Claimant: Gibson & Associates, Solicitors, Port Road, Letterkenny, Co Donegal

Respondent: In Person

Claimant's Case.

The claimant was a truck driver for the respondent and would receive a text each Saturday evening to inform him of the following weeks work. In February 2010, the claimant replied to a text asking the respondent to pay him correctly, as he felt he was not paid correctly for the previous weeks work. The respondent phoned him and they had a conversation. The claimant could not remember the conversation but felt he would be better off on the dole than killing himself for that money.

The following evening, he received a phone call from another driver. He wanted to know the pin number for the phone in the lorry, which the claimant drove. The claimant tried to contact the respondent by phone that week but he would not answer his phone.

Two weeks later, the claimant phoned the respondent and asked for his P45. The respondent

asked him to come to his home at 6:15pm the following day. When he called to the respondent's home the respondent told him he didn't have it. The respondent said to him "if I got my hands on you last Saturday". The claimant said what would you have done? The respondent wanted to fight him there and then.

The claimant had to go to his Solicitor to get his P45. There were no discussions about him returning to work.

Under cross-examination the claimant reiterated he was left short in his pay. He did not tell the respondent he would be going to L to go on the dole.

Respondents Case:

The respondent is a family operated business. The business had a contract with a supermarket which operated seven days a week. That contract was to carry goods to and from the location. The supermarket decided that they required only one load per run and this meant his profits were halved. He had only three day's work for the claimant but paid him €350.00 for the days.

He loaded the lorry himself and texted the claimant on the Saturday evening in February 2010. It was for a load to be delivered to Cork on the Monday. He received a reply from the claimant stating "whenever you pay me, I will go". When he telephoned the claimant, the claimant told him the money was no good. The claimant was his most expensive employee and the work had stopped. The claimant told him he would be better off on the dole and said he was going to L on Monday. The respondent used another man to deliver the goods.

When the claimant called to his home, he said where's my P45? He told the claimant he would get it in the post.

He received a letter from the Department of Social Protection asking if he had work for the claimant and he told them he had. The claimant was a good worker and was not dismissed

Under cross-examination the respondent said the claimant told him he was going to L to go on the dole. He did not try to contact the claimant.

Determination:

The Tribunal has carefully considered the evidence adduced during this hearing. This is a case where an employee has resigned but claims that their resignation was forced by the conduct of the employer. In such cases, the onus is on the employee to prove that their resignation was justified in all the circumstances.

The burden of proof rests with the claimant to demonstrate that his decision to resign his position with the respondent company was reasonable in all the circumstances. In particular, the claimant must show that the respondent company acted in such a way that no ordinary person could or would continue in the workplace.

There has been no suggestion that the claimant was anything other than a good employee. It is common case that the parties had a conversation on the Saturday evening in February 2010. The respondent said the claimant was not dismissed and was told by the claimant he would be better off on the dole. He had to deliver the goods to Cork and the claimant had told him he

would be signing on the dole.

The claimant stated he was owed money for hours he had worked and that he could not contact the respondent. However an employee has statutory rights under the Payment of Wages Act to claim outstanding wages, and in this case was not alleging he had been left unpaid for a significant period of time. While he may have felt some justifiable annoyance at the respondent it was unreasonable to give up his job in these circumstances.

The Tribunal was not convinced that the claimant had no alternative but to resign his job, and therefore finds he was not dismissed, but resigned voluntarily without proper justification.

The claim under the Unfair Dismissals Acts 1977 to 2007 must fail and is hereby dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)