

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE - *Claimant*

Against

EMPLOYER - *Respondent*

under

CASE NO.

UD617/2011

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr S. Mahon

Members: Mr R. Murphy
Mr J. Flannery

heard this claim at Mullingar on 9th October 2012

Representation:

Claimant(s) : Mr. Sean Sheehan, 72 Clontarf Road, Tullamore, Co Offaly

Respondent(s) : JD Scanlon & Company, Solicitors, The Bridge Centre, O'Connor Square,
Tullamore, Co Offaly

The determination of the Tribunal was as follows:-

Background:

The respondent company was involved in the waste recycling business. The claimant was employed, firstly, as a welder / fitter to carry out a fabrication job for the respondent at a weekly gross wage of € 850.00. This job lasted a couple of months. He was then employed as a skip truck driver. He did not have a HGV licence and applied for the test, passed and paid for it himself. In March 2008 his wages were reduced to € 700.00 and to € 569.35 in January 2009.

The staff were informed that the respondent's location to pick up transport would move to St. Margarets in North County Dublin. The claimant travelled there for 3 weeks before his employment ended. He travelled by personal transport to the location, which was a 120 mileround trip, and paid the road tolls himself. His hours of work extended from 8.00 am to 6.00pm to 6.00 am to 7 pm. The claimant's employment ended on June 22nd 2010.

The claim before the Tribunal was for constructive dismissal.

Claimant's Position:

The claimant gave evidence. He stated that he had been employed as a welder / fitter and not a truck driver. At first the working relationship had been good but this changed in the last year of his employment. He had not been provided with a company mobile phone and had to use his own. The claimant felt he had been the only one subjected to work long hours. On one occasion, 10th June 2010 he had been asked to attend a location in Dundrum, Dublin, to pick up two skips. He refused to do it as he felt he had already completed a long shift but was to do it or else. He was late going home that evening and his truck was the last to arrive in the yard.

On 22nd June 2010 he was located in Ballyfermot, Dublin with a flat tyre and it was coming up to 3.00 p.m. He informed the office that he had a flat tyre but was told to complete the jobs he had been rostered. He asked to get someone else to cover the jobs required but was told by the Managing Director to complete the jobs "no matter what", if he did not like what was being done he could meet him in the yard "and get his papers". He returned to the yard and found most of the truck drivers were leaving for the evening.

There had been no previous problems or written warnings given. The claimant gave evidence of loss.

On cross-examination he stated that he had been hired as a fitter / welder. He had left full time employment to take up the position. He was informed there was plenty of welding work to be carried out. He agreed he had a small business of his own. He told the Tribunal that he had been left without work on a number of Fridays, approximately 7. He said that he, and another colleague, had been treated differently and unfairly to other staff. Other staff were called in to work Saturdays but he was never offered the opportunity. He had made complaints but none in writing. When put to him he refuted he said he could not be bothered with work. He accepted he had no alternative but to terminate his employment

On re-direction he agreed he had taken personal calls while working for the respondent. He had received two pay cuts while working for the respondent. In March 2008 from € 850.00 to € 700.00 and in January 2009 from € 700.00 to € 575.00. He stated his complaints included:

1. He felt he had been picked on.
2. The pay cuts he had endured.
3. The fact he had no company mobile telephone and had to use his own.
4. The long hours he was expected to work
5. The 120 mile round trip he had to take to get to and from work plus the road tolls he had to pay himself.
6. On June 10th 2010 he had been allocated more work than other staff and when he asked why he was to work so late he was told it was his job.
7. On June 22nd 2010 he had a flat tyre, had to collect 2 skips but other staff were finished earlier than him.

He felt he was being bullied, it was not good enough and he had had enough.

Respondent's Case:

The Managing Director / Owner of the respondent company gave evidence. The claimant commenced employment in 2007 when a new site was being built. The claimant was suggested as an employee. There had been no prior problems with him. The fabrication work dried up and there was a full time maintenance man on site. He spoke to the claimant about doing some driving which did not involve a HGV licence. The claimant went and obtained his own HGV licence. At the time the claimant was earning more money than other drivers. Due to the downturn in business pay cuts ensued.

When asked he said he could not understand why the claimant had not had a company mobile telephone. He could not understand how the claimant thought he was being bullied. It was never brought to his attention regarding the non payment of road tolls by the respondent.

On June 22nd 2010 the claimant would not pick up a skip. This was an important task as the respondent needed him to pick it up plus a cheque owed to the respondent. The claimant refused to do it and returned to the yard. The witness asked him was he staying or going. He, the claimant, said that he was fed up going up and down to Dublin and asked were his papers ready; they were not. He came back some days later to collect them and said there were no hard feelings.

On cross-examination he agreed the claimant's personal business did not affect his work with the respondent company. The claimant told him he was leaving and preferred to work in his motorbike business. He agreed the respondent did not pay road tolls for staff coming and going and going from work.

Determination:

In a case of constructive dismissal the onus is on the claimant to substantiate that their employment had become so untenable they had no alternative but to leave their employment and therefore be constructively dismissed.

The Tribunal have carefully considered the evidence adduced in this matter and find that the claimant was not constructively dismissed in this case but had left his employment of his own volition.

Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)