

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD289/2011

MN282/2011

against
EMPLOYER

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. J. Lucey
Members: Mr. G. Andrews
Ms. S. Kelly

heard this claim at Limerick on 17th October 2012, 10th January 2013 and 11th January 2013

Representation:

Claimant:
Purdy Fitzgerald, Solicitors, Kiltartan House, Forster Street, Galway

Respondent:
McMahon O'Brien Tynan, Solicitors, Mount Kennett House, Henry Street, Limerick

Respondent's case

The respondent started out as a scrap metal business but developed into a galvanising and metal treatment plant. The claimant was taken on in July 2005 and part of his responsibility was Human Resource Management. Although the claimant had not signed for or accepted a recently published employee handbook he was fully aware of the disciplinary and grievance procedures in place at the time of his dismissal. In fact he had been involved in the dismissal of employees himself whereby he invoked a disciplinary procedure.

The reason for the claimant's dismissal was that he had sent confidential company information to his own private e-mail account and to an outside third party. This was seen as gross misconduct by the claimant and he was dismissed after an investigation was carried out by the respondent. The claimant was not consulted with during the investigation but the allegations were put to him in the course of the disciplinary hearings and he did not

co-operate with the respondent insofar as he never offered an explanation as to why he sent the e-mails in question. The claimant was dismissed by letter dated 13th August 2010 and subsequently appealed this decision according to the respondent's procedures.

An appeal hearing took place on 20th September 2010. The claimant's appeal against the decision to dismiss him failed and he was notified of this by letter dated 13th October 2010.

It was accepted by the respondent that the claimant was dismissed without notice or payment in lieu of such notice.

Claimant's case

The claimant told the Tribunal that his position within the respondent had been undermined since about 2009 and he felt it necessary to discuss this with a long term friend of his who was outside of the respondent's employment. To this end the claimant sent his friend some e-mails from his work e-mail account but he did not regard the content of these e-mails as sensitive to the respondent.

The third party to whom the claimant sent these e-mails told the Tribunal that there was nothing in these e-mails that if used by him could lead to damage to the respondent's business.

Since starting work with the respondent in 2005 the claimant often worked from home and his colleagues and manager were well aware of this. Software, licenced to the respondent was installed, by a then serving Financial Director of the respondent, on the claimant's home computer, in order to facilitate him in working from home and his home broadband was paid for by the respondent. Therefore it was the claimant's case that his home computer was an extension to his work station and it was logical that he would send items from his work e-mail account to his personal e-mail account.

The claimant contended that his dismissal for gross misconduct was unfounded as he had not breached company policy to a degree that could be construed as gross misconduct.

The claimant was dismissed for gross misconduct without notice or payment in lieu of notice.

Determination

The Tribunal carefully considered the evidence adduced at the hearing. There was a clear undermining of the claimant's position within the respondent company that led to a break down in the bond of trust between the claimant and the respondent. It was this break down in trust that led the claimant to seek advice from a third party outside of the company and to this end the claimant sent certain e-mails to this third party from his work e-mail account. However the content of these e-mails were not such that the sending of them would merit the dismissal of the respondent. Other e-mails were sent to the claimant's personal e-mail account, which may have contained sensitive information but the Tribunal are satisfied that he was authorised to work from home and that in practice his home computer and e-mail address were an extension of his work station. Indeed, his home broadband was paid for by the respondent and certain software, licenced to the respondent, was installed on his home computer by the respondent.

The Tribunal finds that the claimant was unfairly dismissed by the respondent. However the claimant could have been more co-operative with the respondent with regard to their enquiries

in relation to the e-mails in question and in all the circumstances the Tribunal awards the claimant €25,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

It is clear from the evidence adduced at the hearing that the claimant was not given any notice of termination of employment and nor was he paid in lieu of such notice. Therefore the Tribunal awards the claimant €3,895.00 under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)