

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE

CASE NO.  
UD426/2011, MN423/2011  
WT145/2011

against

EMPLOYER  
under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**  
**ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. O'Connor

Members: Mr G. Andrews  
Mr O. Wills

heard this claim at Tralee on 3rd October 2012, and 17<sup>th</sup> January 2013

### **Representation:**

Claimant :

Respondent :

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn at the outset of this hearing.

The determination of the Tribunal was as follows:

### **Claimant's Case**

The claimant commenced employment with this warehouse and distribution firm in the autumn of 2003. He described his job as a general operative and as a van driver. There was no tacograph in use in his van. No contract of employment ever issued to him. The claimant rarely received payslips and said he never got overtime payments. He also stated that his working relationship during his early years with the respondent was very good. That situation had changed in 2008 when the claimant left his job for up to two weeks following a verbal abusing from the managing director. When he received an apology from that manager the claimant returned to work. Within a couple of years that manager returned to "his old ways."

The claimant reported to work before dawn of 26 November 2010 with a view to loading his van with orders and then delivering those orders and goods to customers. The managing director was also present and he was displaying a "hot temper mood". Also present was a female employee.

The claimant heard the managing director call him abusive names and also cursed and roared at him. When the claimant returned to the depot some twenty minutes past midday that abuse intensified. The claimant told the Tribunal that the managing director started throwing boxes and pallets towards him. One of those boxes containing five kilogrammes of frozen sausages struck the witness. This caused facial injuries and frightened the claimant. As part of this scene the managing director also roared and verbally abused him.

The Tribunal was shown over twenty minutes of silent video footage taken by a camera inside the depot which coincided with the timing of this incident. However, the Tribunal was told that the alleged abuse and assault took place outside that depot.

Following that reported onslaught the claimant continued on his regional delivery rounds and returned again to the depot around 18.30. There he again met the managing director who apologised for his earlier actions and misbehaviour. The claimant in turn pointed out to him his facial injuries and said that this time he (ie the managing director) had “crossed the line”. The claimant then left the premises and his job. He needed medical treatment for his injuries and the whole situation with respondent caused him physical and mental pain. The claimant was adamant that he did not have another job lined up at a named new employer.

The claimant’s wife who had worked for that other employer told the Tribunal that he did not have a job there or had even been offered one. On occasions her husband had complained to her about the names the managing director called him. This witness received a phone call from the claimant on 26 November 2010 stating that he had been struck by goods through the actions of that manager. She took photographs of the condition of his face following his visit to a doctor. He was upset at this incident and suffered from pains in his face and an eye. She commented that subsequent to that incident and his cessation of employment with respondent he felt useless and that she was “living with a different man” than the one she had married.

A former employee who spent five years with the respondent said that initially the managing director treated staff well. That attitude however changed to aggression over time. The claimant was particularly at the receiving end of that aggression. This witness added that this manager also called him degrading names.

## **Respondent’s Case**

The respondent is an enterprise that operates a food distribution service in the southwest. Its premises consist of a depot and office facilities. The main activities in that depot were the storage, loading and unloading of product onto vans for delivery throughout that region. Its managing director described it as a small business where all staff were treated “at the same level”. This manager stated that the scenarios as outlined by the former employee did not happen. Despite the claimant not being the most efficient employee this manager was fond of him and complaints about his work were outweighed by his character and general manner. He denied ever addressing the claimant in any derogatory manner or being in any way aggressive towards him.

The witness indicated that there was no unusual activity or indeed memorable incident during the loading of the claimant’s van close after noon on Friday 26 November 2010. As usual people had to speak loudly at times to be heard as boxes were placed in the claimant’s van for the final deliveries

of the day. A colleague handed the boxes to the managing director who in turn passed them on to the claimant. No throwing of boxes took place in that loading. The witness had no issues with the claimant on that occasion and certainly was not angry or annoyed at him that day. This witness had no recollection of an incident as described by the claimant during that loading.

The managing director was surprised to see the claimant return to the depot shortly after six pm that evening. It was not required as drivers were allowed to take the vans home with them once deliveries were completed. When he met the claimant the managing director said he was informed by him that since he had got a job elsewhere then he was leaving the respondent with immediate effect. This news was unexpected and therefore he asked the claimant to reconsider his decision. The claimant had left the company before and then subsequently returned. The witness allowed the claimant to drive home in a company van and did not observe any cuts to his face or eyes. This witness also phoned the claimant the following Monday and Tuesday but the phone rang out and no messages were left. He first became aware of the claimant's labelling of his termination of employment as a possible constructive dismissal case when he read a letter from the claimant's solicitor dated 30 November 2010.

An office worker with ten years' experience working with the respondent also stated that nothing unusual happened in the workplace on 26 November 2010. She had no recall of an incident as described by the claimant and he certainly did not approach her following his alleged assault. Besides the claimant never mentioned this incident to her during a telephone conversation they had later that day. She was not present when the claimant arrived back to the depot in the early evening. This witness told the Tribunal that the managing director was not abusive at work.

A butcher working with the respondent since late 2010 handed the loading boxes to the managing director on 26 November in helping to load the claimant's van. He said that there was no tension or aggression or name calling involved in that operation and that the claimant seemed fine. While this witness could not see the claimant during that loading he did not observe any indication that he had been struck by a box or that he sustained facial and eye injuries. Later he received a phone call from a colleague who was not present on the day to say that the claimant left the respondent as the managing director had hit him with a box. The claimant confirmed that to him in a subsequent call over that weekend but this witness did not believe the claimant's allegation.

Another current employee who labelled himself as one of the lads had thirteen years' experience with the respondent. While on leave on 26 November 2010 he received a telephone call from the claimant who told him he had walked out of the company as the managing director had thrown a box at him. The claimant was "fuming" during that call and was clearly angry and upset. There was no reference from the claimant during that call that he was leaving to go to another job. However he frequently spoke of going to a particular new employer. When this witness returned to work he immediately told the managing director on the contents of the claimant's report.

The respondent's accountant made an effort to detail and clarify the various payments made by the respondent to the claimant. He told the Tribunal that the taxation affairs of the respondent and the claimant while employed by the respondent were in compliance with all the relevant legislation.

## **Determination**

In determining this case the Tribunal needed to assess the clear conflict of evidence between the parties particularly focussing on the circumstances of the claimant's cessation of employment. The Tribunal is satisfied, in the first instance, that the claimant did not leave the respondent in order to take up employment elsewhere.

Having carefully considered the totality of the evidence the Tribunal finds, on balance that an incident along the lines as described by the claimant did indeed happen. In noting the denials of the respondent to this incident and other reported abusive behaviour the Tribunal prefers the version of events as presented in the claimant's case. Assaults at work among the workforce are not acceptable and merit dismissal in the event that an employee has been shown to be responsible for such behaviour. Likewise an employee who is subjected to abusive behaviour in whatever form but especially of a physical nature by their employer or other employees has an entitlement to redress. The respondent in this case had no grievance procedure to guide employees. The claimant's unplanned and involuntary resignation was a reasonable reaction to his reported treatment.

Consequently, the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the Tribunal awards the claimant €35,000.00 as compensation under those Acts.

The appeal under the Organisation of Working Time Act, 1997 falls for want of prosecution.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)