

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**

**CASE NO.**

EMPLOYEE *-claimant*

UD648/2012

Against

EMPLOYER *-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. T. O'Sullivan  
Mr. J. Moore

heard this claim at Dublin on 10<sup>th</sup> May 2013

#### **Representation:**

Claimant:

Respondent:

Dismissal is in dispute in this case so it is up to the claimant to give evidence first.

#### **Claimant's Case**

The respondent company is a garage for agricultural machinery. The claimant worked for the respondent from 1998 as a general assistant around the garage. This entailed cleaning the floors in the garage, valeting the machinery and assisting the mechanics. The claimant was placed in employment with the respondent through the local Rehab group and gave evidence with the assistance of the National Advocacy Service for people with disabilities.

Other than a few minor disciplinary issues concerning absenteeism the claimant had a very good relationship with the respondent until an incident that occurred on the 28<sup>th</sup> June 2011.

The claimant attended work as normal and was washing a tractor when a mechanic (TS) asked for his assistance in 'splitting' a tractor. In order to make repairs to the tractor engine each end of the tractor is put on two jacks and pulled apart; 'split'. This is a two person job that the claimant often assisted in. In this instance the handbrake was not engaged in the tractor so when they moved the tractor apart it crashed off the jacks. The

respondent manager(RM) came running into the workshop and said to the claimant, *'you've loads of money now, don't come back after dinner.'* The incident occurred just before lunch. The claimant took this instruction from RM to mean he had been dismissed. He had no further contact with the respondent except his attempts to secure his P45.

The claimant gave evidence of his loss and his attempts to mitigate his loss.

The claimant disputes that he refused to help in splitting the tractor or that he was in anyway abusive, agitated or angry. He did not forcefully or intentionally push the tractor causing it to crash. The claimant believes that the jacks could have been faulty leading the tractor to crash off them when moved. In his 16 years working for the respondent he has not seen a tractor crash like that before. When asked by RM if he had pushed the tractor off the jacks, he replied that he had not; he disputes nodding his head and saying yes. RM then instructed him to clean up the mess and go home, he did not return after lunch as he had been instructed not to return.

The claimant never spoke to the garage owner (LM) and she never asked him to come in to talk about the incident. The claimant never received the letter of the 5<sup>th</sup> of July 2011 requesting him to come to the respondent premises to discuss the incident. The claimant is aware that the respondent compiled a P60 for him for 2011 and considered him still to be in employment.

### **Respondent's Case**

LM gave evidence that she and her husband started the respondent company in 1979. It is a family run company employing 12 people. The claimant's family are neighbours and family friends, so when Rehab approached them to employ the claimant they readily agreed. He was initially employed to do light work and over the years he was trained to assist the mechanics.

Other than a few minor disciplinary problems, namely absenteeism and bad language the employment relationship was good. The claimant's behaviour was always tolerated due to the family connection and *'deep down he was a good natured fella.'*

LM was informed about the incident of the 28<sup>th</sup> of June 2011 over lunch and was aware that the claimant did not return to work after lunch. The claimant often disappeared for a few days so it was only when he had not returned after a week that LM wrote to him. The letter of the 5<sup>th</sup> of July 2011 requested that the claimant return to work as soon as possible so the incident could be investigated.

A number of people including the claimant rang the respondent requesting his P45. All were informed, including the claimant to contact LM. The claimant had not resigned or been dismissed so LM could not give him a P45 and instead asked him to come to the office. LM spoke to the claimant directly and requested him to come to the premises; he never returned to the respondent. The claimant was never removed as an employee and remains *'on the books.'* LM maintains that the claimant *'is an employee that we would never have fired, probably.'*

The respondent's representative wrote to the claimant directly in January 2012 outlining the respondent's position in relation to the incident and the claimant's failure to return to work. The claimant did not respond to this letter.

RM gave evidence that on the 28<sup>th</sup> of June 2011 he was in his office when he heard a very loud bang. He rushed into the workshop to discover the tractor crashed on the ground, so he asked TS (the mechanic) what had happened. TS informed him that he had asked the claimant for help when splitting the tractor, that the claimant wasn't forthcoming but when he did come to help, in a rage, he gave the wheel *'a big strong push and it came off the jacks.'* RM asked the claimant if and why he did it; the claimant just nodded and put his head down. RM interpreted the claimant's actions as him agreeing to that version of events. RM was in shock, he had never seen anything like it so only instructed the claimant to clean the mess up and then walked out. RM disputes saying *'you've loads of money now, don't come back after dinner'*, considering the damage and the fact someone could have been seriously injured *'that was the last thing on my mind.'* RM did not dismiss the claimant.

It only takes a gentle push to split the tractor. The claimant was trained in and had assisted in this process on many occasions. RM believes that the claimant knew that he would be disciplined so chose not to return to work. It was normal for the claimant not to come to work for 4-5 days.

TS (the mechanic) gave evidence that he asked the claimant to assist him in splitting the tractor. The claimant had his hand on the front wheel and violently pushed the tractor. TS asked why the claimant had pushed it so roughly, he did not respond as TS believes he was also in shock at the destruction caused. When RM asked TS what had happened, TS told him that the tractor had been pushed apart *'roughly.'* RM did not tell the claimant to go home or that he was dismissed; he only instructed him to clean up the mess. TS agrees that the claimant's negligence caused the accident but that it was an accident.

### **Determination**

The Tribunal prefers the evidence of the respondent and are satisfied that the claimant was not dismissed from his employment. The respondent attempted to contact the claimant in order to conduct an investigation and attempted to get him to return to work, he remained on the payroll as an employee.

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

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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