

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

MN853/2007
UD1101/2007

Against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr. R. Prole
Mr G. Lamon

heard this claim at Dublin on 29th April 2008

Representation:

Claimant(s): Mr. Gerry Doherty, O'Reilly Doherty Solicitors, 6 Main Street, Finglas,
Dublin 11

Respondent(s): Mr. Stephen Sands, CIF Construction House, Canal Road, Dublin 6

The determination of the Tribunal was as follows:-

Respondent's Case

The MD of the respondent company told the Tribunal he had been in business since 1968 and undertook electrical installations work in schools and public buildings. The claimant who was a fourth year apprentice commenced employment on 20 July 2006. The respondent undertook work in schools during the summer and they hired a number of staff. Staff were let go when the job was completed. The claimant had an accident on site on 13 December 2006 and was absent for six months. A few days after the accident the claimant wanted to return to work but the respondent requested a return to work certificate from his doctor before allowing him back. The claimant returned to work on 21 June 2007. Eight staff were let go between 2 September and 30 September. The claimant was given a weeks notice on 7 September and he just left, he did not have any further communication with the claimant. The respondent received an insurance claim from the claimant on 28 September. The claimant's job was not replaced. When the claimant left the respondent the

trade union did not contact him. The claimant's union dues were deducted weekly even though the claimant was not a member of a union.

In cross examination he stated that during the summer eight to nine were employed at the school, the main portion of electrical work was completed during the summer. He did not accept that the claimant was told to leave in 2007. He did not know if SG was a fourth year apprentice. He did not know if SG had commenced employment subsequent to the claimant. Staff were told verbally of the situation. The claimant worked for thirty-nine weeks.

The second witness for the respondent KJ the contracts manager told the Tribunal that he was responsible for contracts and employees. He has been employed for over twenty-five years with the respondent. The respondent had a number of employees on different sites. Extra staff were taken on when the respondent was awarded big contracts. A number of staff were let go over the years. The claimant undertook work on a school project. The claimant had an accident on site. The respondent kept in contact with the claimant after this. The claimant was going to FAS to get grinds. At one stage after the accident the claimant returned to work but he did not have a certificate to indicate that he was fit to work. He told the claimant that he was giving him a week's notice and if the job situation improved that the respondent would try and retain him. When he told the claimant that he did not have work for him the claimant collected his toolbox and left. The contracts manager stated that the claimant went missing from the site on a few occasions. He gave the claimant a written warning after a verbal warning. The contracts manager went to a site one day at 11.am. and discovered an apprentice working on his own. He hoped that the claimant would finish phase six of his apprenticeship.

In cross-examination he stated that the reason that the claimant was dismissed was that there was no work for him. He accepted that the claimant was employed before SG and SG was still employed with the respondent. He did not say to the claimant that he had lodged a claim and anyone who had an accident was well insured. He gave the claimant a week's notice and he knew that he was due a week's notice. The respondent endeavoured to retain apprentices. For certain jobs the respondent implemented LIFO.

Claimant's Case

The claimant told the Tribunal that he commenced employment with the respondent in July 2006 and he suffered a serious injury in December 2006 and did not return to work until July 2007. He had a house, mortgage and a child. His contracts manager KJ was very nice to him. He has to complete examinations in June 2008. He undertook work in Kilmacud for three to four weeks and after that he worked in Clondalkin for a few weeks. He worked alongside a first year apprentice. The contracts manager KJ told the claimant on Friday that he was being let go. He asked KJ to give him a break and KJ told him there was no work and he told KJ to f... off. SG a fourth year apprentice joined the respondent after he was let go and undertook work on the site that he was employed on. He went back to KJ and told him that he had put a claim in against the respondent and he did not know who to claim against. He had to pay for an MRSI scan. He knew that work continued on the job after he left and there was not much work left to be done. He left the site on a couple of occasions to purchase equipment, as the first year apprentice did not have a car. Subsequent to his losing his job he has been unable to obtain employment. He has not been in receipt of earnings since his employment ended.

In cross-examination he stated that he is allowed to sit his examination three times. He fell off a roof in work and he did not seek employment after the accident. He suffered an injury to his back

and he had to undergo surgery. He was not allowed back to work. The contracts manager KJ was very sympathetic to him when he had the accident. The respondent needed a certificate of fitness to return to work. The job that he was undertaking was coming to a close and he was the main man on the job. Asked that he walked off the site he replied that he was told to go. He was employed with the respondent before an employee SD, who introduced himself to the claimant. He stated that when he has acquired all his qualifications he should be able to gain employment.

Determination:

The Tribunal is of the view that the claimant was not unfairly dismissed. It appears that in certain instances the respondent implemented a LIFO policy. It is not unusual for an employer to implement such a policy with some but not other employees. The Tribunal accepts the evidence of the respondent that the schools building work was at an end. The respondent had advised the claimant that there was a possibility that he would be let go. He was subsequently given a weeks notice. In the circumstances he was not unfairly dismissed and therefore the claims under the Unfair Dismissals Acts, 1977 to 2001 and the Minimum Notice and Terms of Employment Acts, 1973 to 2001 fails

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)