

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1060/ 2010, WT436/2010

against

EMPLOYER

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms S. McNally

Members: Mr. P. Casey
Ms H. Kelleher

heard this claim at Cork on 21st July 2011

Representation:

Claimant: Mr David Gaffney, Coakley Moloney, Solicitors, 49 South Mall, Cork

Respondent: Mr Shane Crossan, O' Flynn Exhams, Solicitors, 58 South Mall, Cork

The determination of the Tribunal was as follows:

The appeal under the Organisation of Working Time Act, 1997 was withdrawn at the outset of this hearing.

Respondent's Case

The owner of this modest sized horticulturist company issued the claimant with a letter of appointment when he commenced employment with it on 21 August 2006. That letter or contract did not contain any information on disciplinary procedures. The claimant's probationary period was extended to July 2007 as he was out of work through an injury he sustained in January of that year. During that time and beyond the owner described the working relationship with the claimant as fine. That attitude changed in January and February 2008 when the owner had "a strong conversation" with him about his work. By that time the owner had received complaints from others about the claimant's work performance.

There were at least two more similar style conversations with the claimant up to the time of his annual review in October 2008. The subject of those talks was the claimant's time management shortfalls and his ongoing inadequate approach and attitude to his work in

general. While the claimant took those comments “on the chin” the owner was frustrated with the non-reaction of the claimant. At the conclusion of the review the owner presented the claimant with a prepared letter containing a list of adverse points against him. Those points had been discussed and in signing that letter the claimant appeared to accept its contents. That letter written by the owner contained the following paragraph: *In the next few months I hope you pay special attention to all of the above as your recent behaviour has not been acceptable and failure to do so will result in disciplinary proceedings.*

Subsequent to that review the respondent increased the claimant’s remuneration and his work performance appeared to improve as the busy festive season came and went. In spring 2009 the respondent invited the staff including the claimant to write down their duties as employees. The claimant did this and submitted his list to the owner who in turn did not alter that list. These two men again met in August 2009 when the recurring themes of time keeping and work standards were aired. The owner told the Tribunal that the claimant was aware there were issues over his employment and that this work was below what was expected. The claimant again took the criticism “on board” but no formal warnings had issued to him due to his poor performance.

Following another review on 9 April 2010 the owner wrote to the claimant again listing several issues about his work performance. That letter concluded stating that they would have another meeting in the coming summer to discuss the claimant’s development. By that stage the owner had been receiving further complaints from clients and others about the claimant’s work. References were made to time sheets and copies of some of those sheets were produced in evidence. While the respondent allowed thirty minutes a day for travel time the owner maintained that the claimant was not properly complying with his working hours.

The issue of time and work for the claimant was highlighted on 20 April 2010 when the owner observed the claimant in an area and at a time where he was supposed to be working elsewhere. Three days later the witness spoke to the claimant about that sighting and his time management. His signed time sheet for that day showed a considerable shortfall in the amount of time actually worked and the time he was rostered to work. The claimant’s response of shrugging his shoulders did not satisfy the owner. That meeting concluded with the witness telling the claimant not to report for work on 26 April but to attend a meeting with him in the late afternoon. The purpose of that intended meeting was to allow the claimant “to say his piece” about his work situation. The owner told the Tribunal that he wanted to reflect on the claimant’s case and had not as yet made a decision about his dismissal.

Two letters both dated 26 April 2010 issued from the owner to the claimant. The longer of the two was drafted at the weekend from 24 to 26 April. That letter detailed the owner’s dissatisfaction at the claimant’s work performance and listed at least seven dates and incidents where that performance was lacking in time and quality. Part of the final paragraph of that letter read as follows: *However it has become evident that your work dealings and conduct are not up to the standards required for the position you were hired to perform. This leaves me with no choice but to tell you that your employment is terminated effective immediately, you will receive two weeks pay plus any holiday entitlements.*

When the claimant phoned in sick on 26 April and said he was unable to attend the scheduled meeting the owner then wrote a shorter letter to him. That letter also was also in effect a notice of dismissal. The owner justified that decision on the grounds that he had to safeguard and protect his business. He had “bent over backwards” to help him but that approach proved to be unsuccessful.

Claimant's Case

The claimant acknowledged receiving and signing a letter of appointment from the respondent in August 2006. The last sentence in that letter read: *I hereby accept all the terms and conditions set out in this contract*. His normal working week consisted of forty hours spread over four days. The Tribunal was shown samples of time sheets in which the claimant filled in the details. While his employer allowed thirty minutes for travel the witness said this was not enough considering the traffic conditions and journey times. He was not given any guidance on how to fill in those forms.

Due to mislaying those time sheets the claimant went to his local post office on 20 April 2010 to make photocopies during his working time. En route he encountered the owner of the respondent. The claimant could understand the owner's surprise at seeing him there. However, he felt that the owner confronted him about that incident rather than discuss their encounter. He gave the owner a company phone and keys as requested. The claimant said his absence from work the following Monday was not a ploy to avoid the ongoing difficulty with owner and his proposed meeting with him that day. While he did not know what exactly was to happen at that proposed meeting the claimant expected something would happen.

Determination

While the Tribunal has some understanding with the respondent's approach and attitude in this case it cannot find that it acted correctly in its application in terminating the claimant's employment. There was little or no evidence from the respondent that it acted within proper procedures in addressing this issue. A letter of dismissal was written and sent to the claimant without fully investigating and addressing the issues involved in this case. Besides, that letter was sent when the claimant had reported he would be absent due to illness. At a minimum natural justice was denied to the claimant.

In allowing the claim under the Unfair Dismissals Acts, 1997 to 2007 the Tribunal awards the claimant €15,000.00 as compensation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

