

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

UD1029/2005, MN773/2005

against

Employer

Under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Mr. M. Forde
Mr. T. Kennelly

heard this claim at Waterford on 11th July and 15th November 2006 and 12th January 2007

Representation:

Claimant: Dobbyn & McCoy, Solicitors, 5 Colbeck Street, Waterford

Respondent : Brian J. Chesser & Co., Solicitors, 19 Catherine Street, Waterford

The determination of the Tribunal was as follows:

Respondent's Case:

A general operative employed by this manufacturing company spoke of his relationship with the claimant. The witness commenced work with the respondent less than three months prior to the claimant's termination of employment. During that time the witness who was under the supervision of the claimant outlined some instances of adverse treatment he received from him. That treatment ranged from poor and inadequate training from the claimant to receiving unclear orders, and incidents involving locker rooms, forklift machinery and containers. The claimant also undermined management by his comments and instructions which were contrary to company policy and rules.

The witness felt intimidated by the claimant at work. That was due to the claimant's frequent abuse in the form of shouting and screaming at him. That shouting might have been due to the high volume of the radio in the workplace. The claimant controlled that radio. As a result of this treatment the witness had considered resigning from the respondent. In accepting he was also abusive towards the witness the claimant explained that he had reached the end of his tether with him. The witness did not make a complaint against the claimant under the company's grievance procedure.

A meeting took place on 22nd April 2005 attended by the claimant, witness, and the managing director and production manager. The witness was the subject of a complaint made by the claimant. In turn he told the respondent of the ongoing treatment he was receiving from the claimant. Both the witness and claimant were reprimanded at that meeting. The witness has had no problems at work since the claimant's termination of employment in April 2005.

The factory production manager and supervisor of the claimant referred to a number of incidents when the claimant's behaviour was in variance with good work practices. Due to the claimant's erratic and careless driving of a forklift he was responsible for accidents and damage to company property. Pallets were also damaged or otherwise mishandled as a result of the claimant's attitude and actions at work. At times the claimant did not fulfil orders and left loads short for delivery. He wrongly instructed a junior employee on time keeping and neglected to train him properly. The claimant played loud music on the factory floor contrary to the instructions of management. The high noise levels were a health and safety issue. He disregarded management and subjected both the witness and the managing director to bullying. The claimant acted as if he were the owner and manager of the respondent as he ignored reasonable management directions and behaved as if he knew best.

As a result of those misdemeanours the claimant was furnished with warnings. The respondent continued to support him however as shown by their treatment of him while he was absent through sick leave in the early part of 2004. Following a meeting on 22nd April 2005 in which the claimant was given an opportunity to express his views the respondent decided to dismiss the claimant.

In cross-examination the witness insisted that she was only doing her job when she asked the claimant to conduct himself properly. However the claimant resented being approached like that and was disrespectful towards her and other staff. A radio was allowed on the factory floor to cater for everyone there and she did not want it to go. The claimant's attempts to control that radio were a source of trouble. A grievance procedure was not in place at the time of these incidents, as it was never envisaged that a disciplinary process would be needed or that the claimant would be dismissed. He was never stopped from having a representative during the disciplinary process or at any meetings with management. Prior to the decision to dismiss the claimant and following the meeting on 22nd April 2005 the witness and the managing director discussed the claimant's case.

The managing director in his evidence told the Tribunal of his qualifications and his setting up the respondent company in 1985. A large percentage of the raw materials used in their chemical business are hazardous therefore they are very conscious of safety. Some of their employees have been with the company fifteen years and this was the first case to come before this Tribunal. The claimant commenced his employment with the respondent as a general operative on 25th November 2002. He was over enthusiastic and wanted work to be finished in a hurry while witness and the production manager wanted safety to be a priority. On 10th January 2003 the claimant was promoted to supervisor and did not have a formal contract of employment. In June 2003 the claimant had a re-occurrence of a back problem as a result of which he was out of work for two weeks and he received his full pay during this time. In January 2004 he was also absent for a period of two months due to back surgery and he was paid as in 2003. Following his return from this period of sick leave in March 2004 he became critical of the production manager and witness assured the claimant that he had complete confidence in her as manager and she's a compassionate person. From that time he noticed that the claimant became more argumentative and drove the forklift aggressively. Witness spoke to the claimant on a constant basis asking him to slow down and reminded him that the forklift was a lethal weapon with chemicals stored in the

area. He was also asked to lower the volume of the radio as it was difficult to hear instructions being given and health and safety was at risk. The radio belonged to another employee. It was possible that one of the employees could have had an accident with the forklift and it would not be possible to hear him because of the radio. At this point the claimant was supervisor of up to four employees. Other instances regarding the forklift were mentioned during the course of the hearing.

In June 2004 there was an incident in relation to space required for product that was not marketable. Witness wanted the product disposed of properly and had the product in an area over the weekend.

The claimant moved the product and when he was tackled about it he said he'd move it if he wanted, it was his space. The claimant was reminded by witness that it was his right to put the product wherever he wanted and he required that space to store a product temporarily. The claimant was given a verbal warning in June 2004 after this incident while he was on the forklift driving aggressively. The claimant was told that he needed to adjust his attitude that witness was not prepared to take that from him. On 27th August 2004 the claimant was given a written warning because of damage to a pallet of salt. The forklift punctured the salt and it created a mess. The claimant said he was leaving anyway and while he would not accept the warning it was given to him in the presence of the production manager. This was the first such letter witness had written for thirty years. After this the claimant did not speak to witness and if he asked him a question he would relay the answer through a colleague. As supervisor the claimant reported to witness and the production manager. The claimant showed a lack of respect towards him and he felt that his standing in the company was being whittled away as a result.

On 26th November 2004 there was an incident with a delivery truck which had been loaded by the claimant. A pallet of bleach was leaking on the truck where the forklift had nipped the outside drum. As a result the truck had to be unloaded and hosed down and then re-loaded. Witness spoke to the claimant who was accompanied by a colleague and gave him a final verbal warning. The claimant suggested that the incident was fabricated and that the drum was already leaking. He wanted to take photographs and implied that the production manager was a liar whereas witness said that the production manager was very competent and compassionate. The claimant was told that the respondent could not continue to take his attitude. Witness said he would prefer to close the company rather than to see it deteriorate. This behaviour continued with the claimant not speaking to witness and he would regularly barge into the office. The office manager was critically ill at this time and the claimant continued his behaviour of shouting in her presence and banging doors as he entered and left the office. The loud music continued and when asked again to turn it down he said that the volume switch was broken whereupon witness unplugged the radio.

There were two meetings on 22nd April 2005 the first of which was around mid-day. There had been a complaint by the claimant about an employee who called him an insulting name referring to his nationality. This employee who had been with the respondent about six months was a gentle young fellow and it transpired that the claimant had been bullying him and making jokes in relation to his family circumstances. The respondent had not been aware of the bullying prior to this and when matters were put to the claimant he admitted that he had been bullying the employee in question and said that he was an easy target. A further meeting was arranged that afternoon and it was felt that the respondent's future would be in jeopardy if the claimant continued as an employee. The claimant was paid three weeks wages and his holiday entitlements. He was also given a letter of dismissal which he refused to take but it was given to him anyway.

In cross-examination witness said that at the time of the claimant's dismissal there were no written grievance procedures in place however he and his colleague could have been approached by the

employees. The radio or music playing did not distress him once the volume was at a reasonable level. He denied that he ever threatened the claimant.

Claimant's case:

The claimant commenced his employment with the respondent in or around November 2002 as a general operative and when a particular employee left he was promoted to supervisor in September 2003. Prior to joining the respondent he worked with another company and he was never told that he was driving too fast. After the managing director spoke to him he slowed down. Prior to his promotion he damaged a door and it was acceptable to the respondent. As supervisor he was responsible for four members of staff and for the warehouse and store area. While he was absent due to back problems at the beginning of 2004 he was paid his full salary. During his sick leave period the managing director called to his house to see him and after his return to work there were no problems. He was warned by people to be aware of others that they may not be what they seem. There was a lot of pressure to get things done. There were times when the production manager would say that something could not be done and when he would ask the managing director he'd give the okay. Examples of this were given to the Tribunal and one was in relation to a batch of car wash where the claimant's suggestion was not taken on board by the production manager but it was accepted by the managing director.

Two days after the claimant returned from holidays in October 2004 an allegation was made against him in relation to damage to electrical switches. He was not responsible in this case but if anything went wrong he was blamed. In November 2004 the production manager noticed that a can had leaked in a lorry and since he had loaded this lorry he probably was responsible. At one point he noticed bleached leaves on the floor and he asked his colleague to mention this to the production manager but she showed no interest. When the claimant mentioned this at a meeting the production manager also dismissed his suggestion and when the argument got heated he walked away. The production manager was shouting but the claimant kept his cool and said nothing. When the managing director came along he asked to talk to the claimant in the canteen. The claimant brought his colleague to this meeting and the managing director whilst banging the table accused the claimant of shutting the factory down. There was reference to the respondent and the claimant parting company and that the claimant knew where the door was. In August 2004 he admitted that he punctured a pallet of salt and the managing director ranted and raved and told the claimant that he had lost the plot. At this point the claimant told him he would find another job as he the managing director was being unreasonable.

In relation to the loud music he said that the volume was the same all the time and it continued after he had left the company. The music could not be heard over the noise of the machinery. The radio was owned by a colleague and its volume button was not working. At times one had to shout to communicate if the machinery was running. When he made space for a product the managing director without asking what he needed the space for told him he could not use it. He felt safety was being put at risk by the suggestion from the production manager to go into a forty foot container. He could not recall any direct order regarding cleaning the toilets. Apart from the one warning nothing else was put on paper. He was warned on a constant basis that he would be sacked but there was nothing official. He accepted that he did receive the written warning on 27th August 2004. He took the letter and was not asked if he wished to have a witness. He had no difficulty with anyone else except the production manager. When he put ideas to her she undermined him. He told the managing director but it was not easy when he was constantly being told that he knew where the door was. He also mentioned safety issues in relation to covers coming off switches, the carrying dangerous liquids and leaking hoses. His employment was terminated on

22nd April 2005.

In cross-examination the claimant said that while he took the written warning dated 27th August 2004 he did not sign it and disagreed that he received a number of verbal warnings. When he made suggestions regarding work practices the production manager would say no and the managing director would say yes. He did not undermine the production manager. They were all the butt of jokes in the work place including the claimant himself. He admitted that he made a remark to a work colleague that was hurtful and he should not have made it. The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2001 was withdrawn.

Evidence was also given by a general operator who was the claimant's right hand man from 2003 to 2005. In relation to the music he said that the radio was his and he verified what the claimant had said regarding the volume switch. He felt that there was nothing stopping the managing director from getting a new radio. The radio in question was still in use after he left the respondent. There was no bullying of a particular employee KR. It was just banter amongst the staff and KR never raised an issue about the bullying.

Determination:

The Tribunal having considered the conflicting the evidence in this case feel that the respondent was reasonable in its dealings with the claimant. The respondent followed fair procedures and tried to rectify the situation however the claimant did not respond. The claim under the Unfair Dismissals Acts, 1977 to 2001 is dismissed. The claim under the Minimum Notice and Terms of Employment 1973 to 2001 was withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

