

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

UD281/2006

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr. J. O'Neill
Mr B. Byrne

heard this claim at Dublin on 31st January 2007
and 3rd April 2007

Representation:

Claimant(s): Mr. Vincent P Martin BL instructed by Mr. Seán Brown, Con O'Connor &
Co., Solicitors, 7 Dublin Street, Balbriggan, Co. Dublin

Respondent(s): Mr. Alan Ferguson Personnel & Training Services,
83-85 Bridge Street, Ballymena, Co. Antrim, BT43 5EN

The determination of the Tribunal was as follows:-

Background

The representative for the respondent told the Tribunal that the claimant was employed by the respondent and a transfer of undertaking took place. Prior to the transfer taking place the claimant was issued with a final written warning on 29 May 2005. After the transfer the claimant applied for a position of warehouse manager on 12 December 2005. When the claimant arrived for the interview both interviewers believed that he was under the influence of alcohol. He was suspended in the interim pending an investigation. The claimant was later summoned to a disciplinary hearing and he was given a first written warning which would have to be extended and he would not be dismissed. The claimant agreed to undertake measures to satisfy the company that he did not have a drink problem.

The claimant was asked to submit information from his GP and counsellor, which he did. On 6 January 2006 the claimant was scheduled to attend an independent medical examination and he failed to do so. He contacted the respondent and he did not attend. The claimant was called to a

disciplinary hearing for failure to follow reasonable instruction. The claimant was suspended on full pay pending the result of a medical examination. The claimant was called to a disciplinary meeting and he produced a medical certificate. During the hearing a recess was called and the claimant's GP was contacted to establish if the claimant had attended on Thursday evening. Ultimately the two people on the disciplinary panel did not believe the evidence that the claimant put forward. A decision was taken to dismiss the claimant and the claimant was told that he had the right to appeal and no appeal was received.

Counsel for the claimant told the Tribunal that the last and final warning, which issued to the claimant was extended to twelve months. He contended that the claimant could remain in employment. The claimant would present himself to a doctor nominated by the respondent company on 6 January. The difficulty was that the claimant was given two days notice of the appointment. A meeting was convened for the 13 January 2007, a recess was taken during the meeting and a decision was taken to dismiss the claimant due to the fact that the claimant did not attend the doctor. The claimant failed to present himself to the company doctor as he was unwell and he went to his own GP. He came to the conclusion that it was a breach of natural justice without consultation.

Respondent's Case

Ms. LD on behalf of the respondent told the Tribunal that she was employed as an external consultant. She had a duty to ensure that the respondent was compliant with employment legislation. She prepared the notes of the meeting with the claimant on 13 January 2006 and typed it on a computer. She telephoned the G.P's receptionist to establish if the claimant had attended the surgery in January. The receptionist told her that she did not have a record of the claimant attending. Ms. LD had a signed form of consent from the claimant to request this information. The receptionist told Ms. LD that she had no evidence that she knew who the claimant was, and there was no record that a person known as the claimant attended the surgery. The full inference that she took from the conversation was that as far as she was concerned the claimant had not attended the surgery.

In cross-examination Ms. L.D stated that she had a Masters Degree in Digital Media and was CIPD qualified. She provided assistance relating to employment law and advised on labour law. It was of the utmost importance that procedures be adhered to and she stated that before signing a document the claimant would have to read it. If the claimant was unavailable to attend the doctor the questioning might have taken a different line. When asked if she could confirm that the G.P had seen the claimant on 5 January she responded that the GP could not confirm if the claimant had attended his surgery. Ms. LD had a fifteen-minute conversation with the claimant on Thursday 5 January and he told her that he was fit to return to work but his GP had not confirmed that. She would have contacted a doctor's surgery previously to obtain information.

In answer to questions from the Tribunal Ms. LD stated that the doctor's receptionist told her that she had not seen the claimant. She went through the report dated 13 January 2006 with the claimant. She stated that the claimant agreed to sign a form of consent to supply a medical report.

The MD of the respondent company told the Tribunal that on 4 January 2006 he was unable to contact the claimant. He asked LD to telephone the claimant to confirm the doctor's appointment. The MD spoke to the claimant later that date. He thought that the claimant was drunk and he was very concerned about the appointment. Ms. LD arranged the appointment for the claimant to attend an independent medical examination. The MD asked a driver in the company to check on the

claimant to ensure he was alright. On 6 January 2006 he telephoned the claimant and he felt that the claimant's voice did not sound right and he told the claimant that he must attend the appointment. He did not recall the claimant telephoning him to rearrange the appointment. The claimant may have said to the MD that he could not attend. The MD told the claimant that he must attend and the MD then sent him a text. When he telephoned the claimant the claimant did not tell him that he was ill.

Claimant's Case

The claimant told the Tribunal that his work colleagues called him Richard and his GP referred to him as Tom. He was employed in the respondent's warehouse in 1998. Prior to that he was not employed in the wine business and he worked on his own for eighteen months. At a meeting on 21 December 2005 the claimant agreed to see an independent company doctor. On 4 January 2006 he telephoned the MD who told the claimant that he would get in touch with Ms. LD. The claimant spoke to Ms. LD and he could not recall if she gave him dates for the independent medical appointment. He received a note on 4 January 2006 in the afternoon regarding the appointment on 6 January 2006. The claimant was not feeling well on Thursday and he went to his GP. His friend brought him to the GP, as he did not feel like driving. He visited the GP at approximately 3pm. on Thursday and he was given a medical certificate dated 5 January. He would have got a call from LD but he was not quite sure. He knew that he would have to let someone know by 10.30am. The MD telephoned him and the claimant asked could they reschedule, as the claimant was ill during the night. The MD refused and the claimant then received a text from the MD and he told the claimant that he should attend for his medical appointment. He thought that he would be able to attend and he was quite happy to comply. He received a text from the MD informing him that he should attend but the claimant did not respond to the text.

A meeting was then arranged for 13 January 2006. The claimant was angry about the entire situation. He felt he did things properly. He was attending counselling as well. At the final interview he felt that LD was very abrupt and he felt that no matter what he said it made no difference.

In cross-examination the claimant stated that he was first informed of an examination on 4 January 2006. LD telephoned him and asked if he could attend on Friday and he could not recall her exact words. He was not sure if LD told him the location of the appointment. He could not recall too much about the telephone calls. When asked why he did not tell the MD that he had a medical certificate he responded that it would not have made any difference. He thought that when he arrived at the meeting he might be able to present his certificate and reschedule.

In answer to questions from the Tribunal the claimant stated that he believed that he attended his GP on 5 January 2006 at 3p.m. for ten minutes. He still wanted to attend the independent medical examination and he did not know what would happen. He stated that when the MD telephoned him on 6 January he told the MD that he wanted to rearrange the appointment and he then received a text. A meeting was then arranged for 13 January 2006 and the claimant was dismissed. The claimant did not appeal the decision to dismiss and he went to his solicitor. He was not aware of the company regulations in relation to sick leave. When asked if he had a clear understanding on what he should have done with the medical certificate he responded that he was suspended anyway. When asked if he had received a certificate from Social Welfare he responded that he was being paid.

A witness on behalf of the claimant, a General Practitioner told the Tribunal that the claimant visited his surgery on 21 December 2005. The claimant complained of problems at work and he

was suspended. The GP undertook a series of blood tests on the claimant. On the 30 December 2005 he issued a letter stating that the claimant was fit for work and there was no clinical signs of chronic alcohol abuse. He issued a medical certificate on 5 January 2006 until 9 January 2006. He documented the illness on the medical certificate as viral infection as employees did not want employers to know the nature of their illness and it was to protect privacy. The claimant presented to his surgery on 5 January. He could not recall if the claimant told him on 5 January that he was due to attend an independent medical examination. The claimant may not have been able to attend due to his mental attitude.

The GP signed the medical certificate on 5 January. It was most unusual for his staff to furnish information regarding patients and to do so he would consider a very serious matter. Staff were not allowed to give information on patients. The claimant was suffering from nervous disorder and stress. The policy in the surgery was that no information was furnished on patients unless prior approval was obtained. He always referred to the claimant's first name as Thomas. He had been a general practitioner since 1970.

Determination

The Tribunal was asked to address preliminary issues which arose during the hearing as follows: (i) the way the matter was handled in January 2006 and if it was unfair; (ii) was the time frame given to the claimant in relation to his medical appointment on 6 January 2006 and the mode of notice fair and (ii) should there be latitude if an employee telephones his employer to state that he is ill?.

The Tribunal is of the opinion that it would have been better if the company submitted a letter to the claimant informing him of his hospital appointment. He gave the impression that he was told earlier about the medical appointment. He was absent from work as he was suspended. The Tribunal find that the company did not act unfairly. We are of the view that the claimant did not attend the doctor on 5 January. Failure to attend on 6 January was unusual. We heard evidence from the MD in relation to the telephone call that he had with the claimant and the claimant spoke about a text. The claimant stated that he was too ill to go to the doctor and when people are ill they attend their doctor. The Tribunal does not accept the claimant's evidence and his case under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

