

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO.  
UD598/2005, RP277/2005  
MN435/2005

against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001 REDUNDANCY PAYMENTS ACTS, 1967 TO 2003 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms C. Egan B L

Members: Mr. D. Morrison  
Mr. M. McGarry

heard this claim at Letterkenny on 10th October 2006

#### **Representation:**

Claimant : P.A. Dorrian & Co., Solicitors, Main Street, Buncrana, Co Donegal

Respondent : D.P. Barry & Co., Solicitors, Bridge Street, Killybegs, Co Donegal

The determination of the Tribunal was as follows:

#### **Respondent's Case**

A fishing vessel belonging to the respondent sank on the morning of 24th January 2005, while moored in Maloy, a port in northern Norway. A crew of twelve was on board at the time. There were no casualties. The boat was salvaged some days later following its sinking and was out of commission for almost a year.

The respondent's first witness was a marine engineer who inspected the raised boat three days after the sinking. He did not find any defects in the filters, seacocks, and valves during his examination. With the aid of a video, he detailed the relevant workings of the craft to support the respondent's contention that the ship's sinking was due to an error by the claimant. The witness explained the operation of the boat's filter and value systems. The claimant, as second engineer, was responsible for the safe and smooth operation of that system. He stated that the claimant's failure to operate that system correctly, caused the boat to sink that morning. The witness furnished the Tribunal with a number of documents to show that the vessel was sea-worthy at the time of its sinking.

In cross-examination the engineer said that a faulty valve on its own would be enough to render the boat un-seaworthy. However, he could not find any defects with the valves upon examination and observed that no damage was evident on the treads of the valves. The witness confirmed he was in Norway to examine the boat to protect the owner's interests and also for insurance purposes and to get the boat repaired within its insured value.

The second witness for the respondent, a diver from Norway, described his examination of the submerged craft shortly after its sinking. He found the vessel reasonably stable and eventually entered the craft. When he finally examined the valves, he found one of them open and stated that he proceeded to close it fully by making three revolutions of its wheel. He later had to undertake more work in the engine room, and replaced the covers on the filters. It was his opinion that the boat sank due to open valves. The witness submitted a brief report on 18th March 2005, which was furnished to the insurers.

The third witness for the respondent, the chief engineer, stated that he worked on board the vessel since 1994 and looked after the machinery, and organised repairs. He went on to state that a "wet and concerned" claimant approached him at around 7.00am on the morning of 24th January with the news that the engine room on the vessel was flooding. Both men entered that room and the chief engineer dived using scuba equipment beneath the rising water to examine the scene. The engineer noticed that water was rapidly entering the boat through the filters. He also observed the loose covering of the filters and unsecured valves. Realising that the boat was sinking fast, the chief engineer decided that the crew had to evacuate without delay. The claimant told him that he thought all the valves were closed. When the Norwegian diver arrived the engineer told him of an open valve

As chief engineer, it was his responsibility to look after the machinery on the boat. He was the claimant's immediate supervisor and friend for many years. They shared several tasks on board the boat and the claimant's duties included the operation of the valves and filters. An indicator measured the rotations of the valve and a cap covered the filters. In describing how the filters and valves operated, the engineer said that the claimant probably performed such a task hundred of times both at sea and when berthed.

In cross-examination the witness said that since the boat was fully moored that morning then the only way it could have sunk was through the filter area. He was unable to get near the valves that morning due to the confined space and his scuba equipment. It was also difficult to examine the indicator due to its position. The pumps could not be used at the time as the water level was too high and its intake too fast.

The owner of the boat dismissed the claimant by letter dated 24th April 2005. He stated that he justified the dismissal on safety and confidence issues. The witness felt that the claimant through his negligence compromised the safety of the vessel causing it to sink and consequently broke the trust and confidence necessary in an employer-employee relationship. Upon receipt of that letter of dismissal, an angry claimant entered the witness's office seeking an explanation for his dismissal. He also sought a redundancy package, which the owner rejected as not being an issue.

The witness stated that he travelled to Norway with the marine engineer a few days after the sinking and salvage of his boat. By that time the respondent had arranged and financed the repatriation of that the crew including the claimant. Over the course of time, and through liaising with the insurance company, and with the benefit of reports, the owner became aware of the circumstances of the sinking. He knew of the claimant's involvement in this case. However, he felt obliged not to say anything to the claimant until the diver's report was furnished to the insurance company. He expressed surprise that the claimant had not contacted the respondent from the time of the sinking up to his date of dismissal. Upon receipt of the diver's report, the witness then formally notified the claimant of his dismissal.

In cross-examination, the owner defended the respondent's lack of warnings to the claimant, the absence of a disciplinary process and investigation on the circumstances of the case. The witness felt that the diver's report was clear and made sense and did not accept that the report did not indicate wrongdoing on the claimant's part. He also believed that the claimant understood its contents and meaning. The witness had no recollection of telling the claimant that he would do what he wanted when they briefly met subsequent to the issuing of the dismissal letter. The owner said that the claimant was a member of a loyal crew and imagined that the claimant would not carry out an operation on the boat unless he believed it was safe to do so. The owner was certain that the claimant made a mistake with the valves

### **Claimant's Case**

The claimant had approximately nineteen years experience as an employee with the respondent. Up until the incident in Norway on 24th January 2005 he had no difficulties with his employer. At that time he worked in a team and looked after the maintenance of the fishing vessel. He had similar duties as the chief engineer, a person he knew for many years. The witness, acting on his own initiative, proceeded to clean out the filters and seacock on the boat while it was moored in northern Norway on the morning of 24th January 2005. That procedure involved opening valves on one side of the boat to allow a continuous flow of water to the engines. The valves on the other side then had to be closed in order to properly perform the cleaning task. The claimant accepted that he was procedurally wrong to remove the cover straight off the filter instead of easing it off. When he lifted the cover, water came rushing in through it and the claimant then went to the starboard side to close the valve there. That failed to halt the flow of water. The claimant then informed the chief engineer of the ensuing problem.

The witness referred to two letters sent by the respondent to him on 18th February and 24th April 2005 respectively. The latter, which contained a copy of the diver's report, informed him of his immediate dismissal. The owner confirmed his dismissal in no uncertain terms when the two men met a few days later. No mention was made of redundancy or reasons given for his dismissal.

In cross-examination the claimant accepted responsibility for the sinking of the vessel. He felt his dismissal was due to the sinking of that craft and later added he

“supposed” he knew the reason for his dismissal. The witness conceded he made a mistake that morning in the operation of the valves and filters but insisted that error was not deliberate. The claimant had been a crewmember of that particular boat since 1994 and had performed the task of cleaning the filters many times

The witness accepted that water cannot flow through a closed valve and that the only way it could enter the filter was when a valve was either open or partially open. An open valve was suggested as the reason for the sinking soon after the boat’s sinking and the claimant was aware of that suggestion. At the time of the incident the witness was convinced the port valve was closed as it should have been but realised that was not the case during an initial observation of the sinking craft. He also accepted that the sinking might have been prevented had he handled the filter cover with more care. The witness could not remember whether he observed the position of the indicator at the time. The indicator was used to show the degree to which a valve is open and closed.

### **Determination**

Having considered the adduced evidence, the Tribunal, unanimously finds that the dismissal of the claimant was fair and reasonable. As an experienced member of the boat the claimant was aware of the operations of the fishing boat, particularly in regard to his role in operating the filter and valve system. The claimant honestly made a grave error in the manner way he carried out that operation on 24th January 2005. He accepted responsibility for that error and the Tribunal commend him for that stance. However, his mishandling of that operation was so serious that, despite the respondent’s procedural defaults, the claimant’s dismissal on the grounds of gross misconduct is justified. Accordingly, the claimant under the Unfair Dismissals Acts, 1977 to 2001 fails.

It follows from the above that the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 also fails due to dismissal on the grounds of gross misconduct.

The Appeal under the Redundancy Payments Acts, 1967 to 2003 was withdrawn during the course of the hearing.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

