

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

UD387/2007

Against

Employer
under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr E. Handley
Mr A. Butler

heard this claim at Dublin on 27th August 2007

Representation:

Claimant(s): Ms. Cliona Boland, BL instructed by Philip O'Riada Solicitors, Liffey House,
Primrose Hill, Celbridge, Co. Kildare.

Respondent(s) Mr. Tim O'Connell, IBEC, Confederation House, 84/86 Lower Baggot Street,
Dublin 2

The determination of the Tribunal was as follows:-

Preliminary Issue

Claimant's Case

The claimant told the Tribunal that his marriage broke up and he was sacked for gross misconduct and obscene behaviour. After he was dismissed he could not tell his wife and for a period of three weeks he kept up the pretence of going to work each day. He was hoping to obtain employment. He attended interviews and he could not account for the past one and a half years. He told interviewers that he was let go. It was coming up to Christmas and he had no money and he tried to do bits and pieces. He had to take out personal loans from private moneylenders and it was difficult for him. The claimant did not have a trade union representative but he was represented at a meeting by a shop steward who attended as a witness. He never asked the trade union representative to represent him. He was not paying any union dues to a union. After he was dismissed he did not have any involvement with the trade union.

Determination on Preliminary Issue

The Tribunal heard evidence from the claimant in relation to his state of mind in the period starting from before his dismissal to the present. The Tribunal is satisfied that this amounted to exceptional circumstances and accordingly the Tribunal has jurisdiction to hear the claim under the Unfair Dismissals Acts, 1977 to 2001.

Substantive Case Respondent's Case

The former warehouse systems manager outlined to the Tribunal his work history. The respondent company manufactured security equipment and presently it has three hundred and fifty employees. The claimant was employed when the warehouse systems manager commenced employment with the respondent. He stated that the claimant was loud, boisterous and on occasion he was intimidating. The claimant worked in the warehouse and his duties included picking orders, lifting equipment and manual handling. Early on in the company he spoke to the claimant regarding his punctuality, as the claimant was constantly late for work. The claimant behaved in an aggressive manner towards him on a couple of occasions and he told the claimant to calm down. The claimant was late for work on eighteen occasions and the warehouse systems manager told him that he needed to start work on time. A meeting took place every morning and the claimant came in dressed in his cycle gear. The claimant suffered a back injury in work and the respondent sent the claimant to the company doctor and the EHS manager investigated the matter. When the claimant returned to work he was assigned to lighter duties in the cell for two weeks and he then returned to the warehouse and he did not have to undertake heavy lifting. The claimant was told to take a break if he had a problem with his back. If heavy lifting needed to be completed the claimant got assistance. The claimant was told to remain at the desk and undertake data entry. The claimant attended physiotherapy and he was provided with lumbar support. As far as the witness was aware the respondent paid for physiotherapy and he was not sure if the claimant was sent for a scan. It was not true that the claimant did not have help in the warehouse; the claimant had colleagues in the warehouse.

The claimant received a final written warning at a meeting on 18 September 2006. Present at the meeting were the claimant, NO'D from HR, BN, a union shop steward in the company and the witness. The claimant stated at the meeting that he could not get in to work on time as he had problems. The witness was not aware of the claimant's personal circumstances. On 22 September an incident occurred in the warehouse, the claimant was asked to close a transaction and he became very aggressive and cursed at an employee LW who made a complaint to HR. The claimant was driving a trolley and he drove it at LW and he then jumped off the trolley. The witness tried to calm the claimant. He told the claimant that he would deal with him at a disciplinary meeting, which was arranged for Monday 25th September 2006. In attendance were the claimant BN (shop steward) NO'D HR, the witness and the claimant. The complaint was put to the claimant. The claimant was asked to sit down, he would not and eventually he sat down. The claimant was dismissed for gross misconduct. This was the second incident that had occurred in a couple of weeks.

In cross-examination the warehouse systems manager stated that when he was employed by the respondent four or five staff were employed in the warehouse. When asked if things changed when he joined the respondent he replied that the company made improvements but the basic functions did not change. When asked if the claimant and his colleague had a lot of responsibility he responded that no one ever complained to him. On several occasions he told the claimant to calm down. When asked regarding the claimant's late attendances he replied that on some days the claimant was late by a half hour, ten minutes and four to five minutes. When asked if it was one or

two minutes he responded that it may have been one or two minutes. The company policy stated that the start time was 8a.m. The claimant undertook overtime when it was required. A roster was compiled at the beginning of the week and the claimant could put his name down

In answer to questions from the Tribunal the witness stated that the claimant was dismissed for gross misconduct and for cursing and swearing at other employees. The language that the claimant used was obscene, aggressive and highly offensive. An investigative meeting took place on 22 September 2006 and the claimant was invited to give a statement. The meeting took place in the HR office. The claimant was told he could have representation and a shop steward BN attended. The investigation commenced on Friday and continued until Monday. A number of staff in the warehouse were spoken to. When asked what the claimant's response to his dismissal was he responded that the claimant said okay. The witness went to the warehouse and the claimant took his gear and told the witness that he would see him in court. When asked if the claimant's behaviour was so bad as to warrant summary dismissal he responded that the claimant had been spoken to beforehand and he was aware that it was not acceptable. The HR manager made the final decision to dismiss the claimant. When asked if there was no reference to a five-day appeal in the procedures and in the letter that the claimant received it referred to an appeal within five days he responded that the appeal would go to the HR manager. When asked if the appeal was not part of the disciplinary procedure he responded that the appeal would go to someone who was impartial. The first time that the claimant became aware of what was happening was on the Friday and the respondent was gathering information. The claimant was informed on Friday that they would meet again on Monday and establish what the next step was. When asked if the claimant was informed that this might lead to dismissal he responded that the claimant was aware on Friday regarding dismissal and it was information gathering. When asked if he had thought to suspend the claimant with pay he responded after the meeting the claimant was informed that he would be called to a disciplinary meeting and then the claimant was informed of the decision.

Determination on Substantive issue

The Tribunal does not believe that the respondent discharged the onus of proof. Specifically no direct evidence was addressed in relation to the incident which lead to the dismissal of the claimant.

The Tribunal believes that the claimant's misbehaviour which was the subject matter of the disciplinary process and which arose from the incident on September 22, did not justify his dismissal.

The Tribunal is also critical of the procedures used to discipline the claimant. In particular the investigation, which was carried out, was seriously defective. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2001 succeeds and the Tribunal orders that he be reinstated with immediate effect.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)

