

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

CASE NO.

UD80/2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Ms. J. Winters
Mr. S. O'Donnell

heard this claim at Dublin on 6th June 2007 and 7th September 2007

Representation:

Claimant : Mr. Tom Fitzgerald, Regional Organiser, BATU,
13 Blessington Street, Dublin 7

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

The determination of the Tribunal was as follows:-

Respondent's Case:

The operations manager (O) gave evidence. He had spent thirty-three years working at the plant. He received three complaints regarding the behaviour of the claimant involving racial abuse and harassment at work. He asked the complainants to put the allegations in writing. The claimant said the allegations were fabricated and didn't want to know. He denied he was a racist and stormed out of the office. A few minutes later, he physically assaulted one of the complainants. O went out to the factory floor and spoke to the claimant. He got abusive and was suspended with pay pending investigation. The works manager (W) investigated the matter and reported back to O. The conclusion was that the claimant had a case to answer. W interviewed the witnesses and made a report to O and O wrote to the claimant on several occasions by registered post. The complainants no longer work at the respondent company as the premises has been completely closed down.

The first disciplinary meeting that the claimant attended was on the 15th December 2006. O, W, the claimant and his trade union representative attended. The purpose of the meeting was to let the claimant put his side of the story. The union that the representative was from was not recognised by the company. There was a short debate and the meeting adjourned. The claimant had been sent the details of all allegations against him and had said that they were “fairytale”. Five days later, the meeting reconvened with the same people in attendance. O and W opened the meeting with the same response as before, the company did not recognise the union that the representative was from, but the union official could participate as a private individual on behalf of the claimant. The claimant reiterated that the allegations were “fairytale” and the respondent was not satisfied with this answer. The witnesses were not present. O and W reviewed the evidence and decided that there was substance to the allegations. They made the decision to dismiss the claimant. A letter issued to the claimant detailing this on the 22nd December 2006.

Under cross-examination O told the Tribunal that the report compiled by W was what led O to make the decision to dismiss the claimant. He had conducted investigations at the factory from time to time during his tenure there. The respondent conducted all negotiations with a different union and therefore did not recognise any other one. The claimant had been a member of the other union when he commenced employment with the respondent. At the initial meeting when the claimant demanded to know who had made the allegations against him, he pushed O out of the way and went out and assaulted the man in question. W had no alternative but to suspend him. Copies of the grievance and disciplinary procedure in operation were issued to the claimant on a number of occasions before the disciplinary meeting. O had copies of the registered post receipt which was signed by the claimant. The allegations were put to the claimant on the 12th October 2006. It was at this stage that he was suspended. He was told that he could have any representative at the meeting but the representative from the particular union. O spoke to all of the witnesses himself.

Giving evidence W told the Tribunal that he had worked in the company for the past 17 years. He conducted an investigation over several weeks following written complaints made by two employees against the claimant. W held individual investigation meetings with nine employees and advised each interviewee that their comments could form part of a future disciplinary hearing and that they could be called as a witness in subsequent or future disciplinary hearings. Upon completion of the investigation W passed the report to the Human Resources Department (HR).

The statement furnished by one of the complainants (E) was signed by E in W’s presence.

On 10 October 2006, W spoke to the claimant about his behaviour at a training session. The following day he again spoke to the claimant about his behaviour towards employees, the claimant asked for union representation and then left his office. The claimant was suspended on full pay on 12 October 2006.

Under cross-examination W said he had followed the company rules regarding grievance and disciplinary procedures, was familiar with the company’s procedures, had taken advice and had attended a management course run by a State body. W reiterated that it was company policy to deal with another union but not the union of which the claimant was a member. W refused to continue the meeting against company policy when the union official refused to act in a private capacity to represent the claimant.

The union recognised by the respondent was named in the claimant’s contract of employment.

Giving evidence the Human Resources Manager (HRM) from the parent company of the respondent became aware in October 2006 of the complaints from two employees against the claimant. HRM advised O to carry out a full investigation into the allegations against the claimant.

The claimant, the claimant's union official, W, HRM and a facilitator from the company attended the disciplinary meeting held on 15 December 2006. S.I. No. 146 of 2000 was invoked at this meeting. At that meeting the claimant said he had only received the report of the investigation two days prior to the 15th December 2006 and had not had a chance to review and prepare his response. W said the report had been posted twice to the claimant on both on 4th and 11th December 2006 by registered post. It was decided then to adjourn proceedings until 20 December 2006 to afford the claimant time to read the report.

At the re-scheduled hearing on 20th December 2006 which the claimant and his union official attended, the union official attending as his personal representative, the respondent wanted the claimant's input into the allegations made against him. The claimant denied all the allegations made against him and stated the details of the allegations were "fairytale". Based on the evidence before the company and the facts corroborated, the respondent felt they had no alternative but to dismiss the claimant.

Under cross-examination W said the claimant felt company procedures were robust and that the claimant wanted an outside independent person to inquire into the allegations made against him. The claimant was afforded the opportunity to engage in the grievance procedures. W confirmed that the grievance and disciplinary procedures had been posted out to the claimant on two separate occasions. W said he never met the claimant at any meeting without representation.

Claimant's case

The Deputy General Secretary (DGS) of the union of which the claimant was a member gave evidence. Three employees in the company were members of this union, one of whom was the claimant. DGS had a meeting with E and his wife on the Thursday before 31st October 2006. E wanted a reference from the company. E was very anxious to meet DGS because E said that W had told him to sign a statement that W had typed up. E told DGS that it wasn't his statement.

Under cross-examination, DGS said E wasn't comfortable signing such a statement. DGS never suggested to E to withdraw his statement at any time despite his being uncomfortable signing it.

The claimant giving evidence told the Tribunal that he was employed as a carpenter. During his tenure of work with the respondent company he brought grievances to management but they were ignored. Slogans were written on the wall about him. While in the changing room one day he experienced abuse from E. The claimant said the allegations of assault against him were untrue and did not happen. He felt the company was hostile towards his union membership. He wanted someone to represent him in a fair way. He felt the company refused him union representation. The claimant was paid to 31st January 2007. He established loss for the Tribunal.

Under cross-examination the claimant said he was looking for basic rights within the company. He wanted a third party to inquire into the allegations made against him. He wanted the company to compromise on union recognition.

Determination:

The claimant was given numerous opportunities to engage in grievance procedures as set out by the company. A full investigation was carried out, details of which were furnished to the claimant, along with the grievance and disciplinary documents. The claimant was afforded an opportunity to engage but he did not fully engage as he wanted a third party investigation. He gave no alternative explanation to the allegations made against him other than to say they were “fairytale”.

It appears to the Tribunal that the real issue concerning the allegations of harassment and racial abuse became clouded with the issue of union recognition by the company which is not a matter for consideration by this Tribunal.

Having considered all the evidence regarding the grievance and disciplinary procedures the Tribunal is satisfied that the dismissal was fair in all the circumstances. Accordingly, the claim under the Unfair Dismissals Act, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)