

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO.  
UD402/2006

Against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. E. Kearney BL

Members: Mr. J. Redmond  
Ms H. Henry

heard this claim at Galway on 4th July and 19<sup>th</sup> September 2007

Representation:

Claimant: Mr. Brendan Browne BL instructed by Tom O'Regan & Co., Solicitors,  
Lickadoon House, 60 Lower Salthill, Galway

Respondent: Mr John Brennan, IBEC, Ross House, Eyre Square, Galway

The determination of the Tribunal was as follows:

#### **Respondent's case:**

A former employee (Ms D) outlined her involvement in an incident on the company's premises on the morning of 2<sup>nd</sup> February 2006. Both the witness and the claimant were just finishing their work shift and waiting to officially clock out when an altercation occurred between them. In disapproving of the witness's alleged and perceived behaviour at a back staff door the claimant became highly abusive towards her in both word and deed. She described the incident as very frightening and reported it to her supervisor that evening. The witness made her own-signed statement to the respondent's personnel section on 16<sup>th</sup> February 2006 regards that incident. Subsequent to that statement the witness discovered that the claimant had been making allegations of assault against her. She said that such an assault did not happen. Apart from making her statement the witness played no further role in the respondent's investigation of the claimant's behaviour.

Another former employee who was in the company of the first witness during the above incident gave her version of events. The claimant left his parked vehicle and when entering the premises to clock-out left the door open enough for its alarm to activate. The noise of that alarm was so annoying that the witness pushed the door closed in order to deactivate it. It was the claimant's normal practice to leave the door open when entering the premises to clock-out

but staff were obliged to keep that door closed. As the witness along with others were approaching the door to re-enter the building it was “flung open” as the claimant emerged from the premises. He immediately directed verbal abuse at the first witness in an angry and aggressive manner. The witness made a statement on that incident to the respondent on 16<sup>th</sup> February 2006. References were made to an earlier incident in November 2005 involving the witness and the claimant and added that the claimant’s statement on that incident did not reflect the reality of that situation. She did not report that incident at the time, as she did not want further trouble. However the witness did not want to deal with the claimant again.

The first witness at the beginning of the night shift on 2<sup>nd</sup> February 2006 approached the production supervisor. She lodged a formal complaint against the claimant regarding an incident that occurred earlier that morning. The claimant’s supervisor then spoke to all relevant parties and contributed a statement to the respondent’s investigation into the matter. He also entered into email correspondence relating to that incident. The witness was present at a meeting on 2<sup>nd</sup> March 2006 attended by the manufacturing manager, the claimant, and a person from the personnel section. He had no direct input into that meeting or a subsequent one on 7<sup>th</sup> March when the claimant was suspended. The claimant was not represented at that meeting but was aware of his entitlement for representation.

The production supervisor recalled an incident in November 2005 when the claimant approached him and enquired whether a complaint was made against him. The claimant in turn had not complained about the behaviour of other staff. There had been reports that the claimant was probing health and safety issues and was taking photographs of the work area. The witness who knew the claimant well said his work was “A1” and that there had not been major problems with him up to this incident.

The Tribunal heard evidence from another witness for the Respondent. She worked in the company for circa four years. She recalled an incident in November 2005. She and a female colleague were sitting at a worktable and the Claimant pushed her colleague toward the table. Her colleague pushed away from the table and she lost her balance. The Claimant used very abusive language. Sometime later the personnel manageress asked her to relate the incident to her. She did this and the manageress took a note of her statement. She was asked to sign her statement and she did so.

Under cross-examination the witness agreed that the incident took place in November 2005 and she made the statement in February 2006.

The Tribunal heard evidence from the manufacturing manager. On Friday 3<sup>rd</sup> February 2006 the production supervisor sent him e-mail about an alleged incident on 2<sup>nd</sup> February between the Claimant and a colleague (Ms D). He did not receive the e-mail until Monday 6<sup>th</sup> February. He met the production supervisor on Tuesday 7<sup>th</sup>. They spoke about another, third incident, whereby the Claimant allegedly threatened a production supervisor. They decided that the best course of action would be to suspend the Claimant on full pay and conduct an investigation. They called the Claimant to the office and told him that they were suspending him on full pay and that they were going to have an investigation. He did not say any more to the Claimant that is he did not “get into the nitty gritty because the safety” of the Claimant and others.

They asked the production supervisor to conduct an initial investigation with the employees on his shift, of which there were approximately eleven staff. He interviewed the staff and documented the interviews. He submitted the report on 8<sup>th</sup> February 2006.

The witness told the Tribunal that they investigated the incident that happened at the employee entrance on 2<sup>nd</sup> February 2006. They also interviewed an employee (Ms F) who alleged that the Claimant assaulted her in November 2005. The witness explained that he and the production supervisor and the HR manageress were involved in the process and they, “went through due process”, as they were required to do so. They formally reviewed the facts and the statements. The witness explained that there were a number of letters sent between himself, the Claimant and the Claimant’s solicitor. He had not interviewed the Claimant as up to that point. He met Ms D and Ms F. On 23<sup>rd</sup> February 2006 they posted the signed statements to the Claimant/Claimant’s solicitor.

They had a meeting with the Claimant, and the witness, the HR manageress and the production supervisor attended. The Claimant had been informed in writing that he could have a representative. The Claimant wished his solicitor to represent him but they did not allow that as it was outlined in their grievance procedures that a representative had to be a colleague.

They asked the Claimant about the alleged incident, at the employee entrance, that that was complained about by Ms D. The Claimant answered them “infrequently”. The Claimant had handed them a written statement and he told them that the statement outlined everything; he told them that his statement was clear and to the point and he was not willing to elaborate.

Regarding the incident in November 2005 he told them that it was the “reverse”. He told them that it was he who had been hit. The production supervisor asked the Claimant if he had reported this and the Claimant told them that he had. He had raised this with the Claimant at a previous meeting on 2<sup>nd</sup> March 2006; he had told the Claimant that it looked like he had anger management issues. The Claimant told him that Ms D physically attacked him; she “thumped” him on the chest in the hallway in front of twelve people. The witness explained that it was the first that they had heard of this. The Claimant would not elaborate further. He told them that his statement would suffice. He told the Claimant that the more information that he could give them the easier they could resolve matters. He told the Claimant that if he was not willing to elaborate then they would have to make a decision based on his statements. The Claimant told them that was “fine”, and did not comment further. The Claimant then left. The production supervisor interviewed workers about the incident and nobody saw the incident. They asked Ms D if she hit the Claimant in front of twelve people and she denied that she hit the Claimant. They then inferred that the Claimant had fabricated the incident.

They had also examined CCTV evidence regarding the hallway incident and it conflicted with the Claimant’s version of events. They decided that the Claimant was guilty of gross misconduct and that there was no point in meeting with the Claimant again as he did not want to elaborate. Because it was gross misconduct they had no recourse other than instant dismissal as it was in their procedures. The Claimant was not willing to participate. There was doubt about his statement and a question of fabrication. Dismissal was the “fairest option for the safety of all the employees”. The witness explained that the company procedure does not allow for recourse to the disciplinary/grievance procedure if there was serious misconduct because of the nature of the matter.

The Tribunal asked the witness if he was the decision maker (regarding the dismissal) and he agreed that he was. He explained that he and the general manager were involved in the decision to dismiss.

Cross-examination:

The witness agreed when asked, that he was involved in the process and the dismissal. When asked if he acted as both judge and jury he answered that it was more of a fact-finding mission. He replied in the negative when asked if they provided the Claimant with the CCTV evidence.

**Claimant's case:**

The Tribunal heard evidence from the Claimant. He explained about the incident in the hallway/ at the employee's entrance. He was leaning against the door waiting for the clock to reach the required time. He felt the door being pushed against him violently. The door "barged" shut and he was shocked because his fingers were near the doorjamb. He noticed Ms F and some other people outside and to the left of the door and they were conversing and laughing as if there were some "big joke". He felt that someone deliberately pushed the door to annoy or injure him. He approached one of the women and said, "You f\*\*\*\*\* b\*\*\*\* if that was my fingers". He was sorry that he used bad language and he had overreacted.

The Claimant explained about another incident. He was experiencing problems with a machine and found no fault with the machine other than a capacitor. He has experienced this before and he assumed that it was Ms F who was the cause of the problem because of the location i.e. where she was sitting.

He was walking past Ms F when her chair rolled back. He felt a kick on his calf and he raised his leg to protect himself. He said to her "If you do that again I will have you out of here". He did not assault her. He reported the incident to the production supervisor.

At a later time the production supervisor told him that the manufacturing manager wanted to see him immediately. The three of them met and the manufacturing manager told him that he was being suspended with pay immediately and he was to leave the premises immediately. Prior to the meeting the production supervisor had not given him a reason why he was to meet them.

He left the premises and received a letter sometime after that to confirm his suspension.

Sometime later the Claimant was to go to another meeting. He was not allowed to bring his representative to the meeting. He had prepared a statement and he felt that the statement addressed his position. He did not feel that he could add to the statement.

The Claimant explained, when asked about taking pictures in the factory because of his concerns about a health and safety. He understood that the HSA called to the factory. He felt that this was related to events on 14<sup>th</sup> March inasmuch that they wanted him, "out as an act of revenge".

The Claimant felt that the company wanted him "out quickly". Regarding the disciplinary process he felt that the company took, "several short cuts".

**Determination:**

The Tribunal, after carefully considering the evidence adduced before it, make the following determination:

The Tribunal do not accept that the company had a hidden agenda to terminate the contract of employment with the Claimant due to the fact that he made an anonymous complaint to the Health

Safety Authority in relation to a safety issue in the work place.

The Tribunal find that the actions and behaviour of the Claimant on the occasions in question was such that it did warrant dismissal in the circumstances.

However, the Tribunal are of the opinion that and are unanimously satisfied that the Respondent's actions in conducting the investigation and disciplinary process were wholly unfair. In the opinion of the Tribunal it was unfair that the Claimant was not told what the nature of the initial meeting with the manufacturing manager, in which he was suspended, was about, and further find it incredible that the Claimant was suspended with pay without being told why. It is no defence for the Respondent to say that the Claimant knew what it was about. Further, the Tribunal find that it was unfair to place such weight on the CCTV Footage (as it was underlined to highlight same in the letter of dismissal), without showing it to the Claimant and offering him an opportunity to respond to same. The Respondent, in the opinion of the Tribunal, was not justified in adopting the approach that since the Claimant had not engaged comprehensively in the disciplinary meeting on the 2<sup>nd</sup> of March 2006, that this negated their obligation of offering the Claimant an opportunity to further respond. Further the manner in which the investigation were carried out in relation to the three alleged events raised at the meeting was disproportionate, and all matters should have been investigated in a like manner.

Therefore on the above grounds and in light of the unfair manner in which the matter was investigated and the disciplinary process was undertaken, determined, and concluded, the decision to dismiss is rendered unfair.

The Tribunal determine that the Claimant contributed to the dismissal by failing to participate in the disciplinary process, use the grievance procedure and failed to appeal the decision. We find that the claimant did not tender evidence to the satisfaction of the Tribunal to show that his participation in any such part of the process or the whole of the process would have been fruitless due to previous conduct of the employer, so as to negate the obligation to participate in the disciplinary process. In the premise the Tribunal make a deduction on the level of compensation award to the Claimant.

The Tribunal awards the Claimant the sum of €14,400.00, as compensation under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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