

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

UD1128/2006

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms S. Behan BL

Members: Mr. P. Casey
Mr K. O'Connor

heard this claim at Cork on 9th October 2007

Representation:

Claimant(s) :Mr. Maurice O'Connor, James G. O'Mahony & Son, Solicitors,
City Park House, 20/21 Sullivans Quay, Cork

Respondent(s) : In person

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant gave evidence. He stated that he had commenced employment in September 2003 as an Area Sales Manager in the Munster area and parts of Connaught. He had a lot of clients to deal with. Over time the respondent's turnover increased. The respondent sold metal boxes for electrical enclosures. He had a good relationship with the Managing Director (MD).

In 2005 a new member of staff (JH) joined the company. He questioned the appointment at the time and was informed that JH would be working in the Northern area. It later transpired an agent was recruited for the Northern area. JH was to work with the claimant; he had been very stretched the previous year. His area was divided with JH but he retained all the major clients. During January and March 2005 his work was being compared with JH. He said that it was not a fair assessment as he had originally built up the area. JH did bring in some new accounts. During this time the claimant was having some personal difficulties and was suffering a health problem but he felt determined to succeed. "Work got him up in the morning".

When asked, he accepted he had forwarded an inappropriate email to the two only female staff of the respondent, JH and R. He was called to the office on October 31st 2005 to discuss the matter. He was informed a written warning would be issued. He told the MD that he had not meant to offend the two staff; R had often sent him emails in the past. He asked who had complained, wastold it was R and he said that he would apologise to both staff. He was also informed that R felt shehad been bullied and harassed. The claimant said that he had not read the email in its entirety whenforwarding it on and was embarrassed when reading it in full the day of the meeting with the MD. When asked, he said that he had a copy of the company's handbook and felt that the incident warranted a verbal warning.

The following day he contacted JH and apologised to her about the email, he did the same with R. JH said she had no problem with it; she'd received emails in the past. He told R that some one had complained about the email. R said that she did not know what he was talking about and that it had "never happened". He spoke to the MD again but was told that the written warning would not be removed from his file and would remain there for 3 months. He then consulted his solicitor as the issue concerned him.

A couple of days later the MD rang him. He told the MD that the keyboard on his computer was sticking. The MD said that it must be all the sexual websites he was looking at. He told the MD that that was not appropriate thing to say. His solicitor wrote to the MD. He felt insecure in his role and felt the MD wanted him out. He told the MD that he might be looking for a new job the following February or March. He felt it was impossible to continue. In January 2006 he told the MD that he wanted to focus on his role with the respondent. He was informed in mid January that R was leaving. He received a number of calls from the MD asking if he was leaving and told him to think about it. In January he was told by the MD not to do any reports on his work. He took leave in June to complete the reports. When he asked the MD for reassurance about his job he was told why ask.

In late February 2006 a new system was to be launched in Carlow. Staff were asked to invite customers in order to view the new system. They were told to bring them down the night before, if needed, and bring them out to dinner. He invited some clients. He informed the MD that 2 clients were coming (known as D and W) to the launch. The MD asked would he be arriving the night before the launch. The claimant told the Tribunal that he had not originally intended to go but told the MD that he would.

His clients arrived and they went for dinner. The claimant stated that he a drink at dinner. He then went to his room to do some work and left D and W in the bar having drinks on the respondent's tab. He returned to his clients and they went into town about 10pm. He said that he did not drink a lot that night as he had a health problem and he knew that he would be driving the following day. They went for a takeaway and returned to the hotel around 12.30pm, D and W brought two friends with them. They went to the resident's bar; he had a drink and then left them to go to bed. He told the Tribunal that he checked on his clients on two or three occasions.

The claimant got up the next morning at 7.30am and tried to awaken his clients. He again tried to waken them after breakfast and arranged to meet them one hour later. He rang the MD and told him they would be late to the launch. He replied that it was not a problem. The claimant told the Tribunal that he was not hung over that morning and would not drive if he was. The launch was to begin at 10am on the morning of February 23rd 2006. After the launch the claimant drove to the place they were having lunch. His clients took their own car.

On February 28th 2006 he received a call from the MD asking when he would be back at the office as he (the claimant) was working in Cork. He went to the office around 6.30pm the following day and was given two pieces of paper. The MD told him he had two choices, either he resigned or he would be dismissed for gross misconduct. He was told that he, the claimant, had been drunk at work. He told the MD what had occurred with his clients on the night before the launch and asked who had complained. He was told R had. He asked to step out for a minute and contacted his solicitor for advice. On his return he was asked to sign the resignation letter. The MD said that he had smelt alcohol on the claimant's breath at the launch and that he could not have staff drinking and driving. He had to show an example. There were no negotiations and he had no choice but to sign the letter of resignation. He returned to work and said he would work his month's notice. He asked for a reference but did not get one.

On March 13th 2006 there was a sales meeting. There were new staff present. He asked what was going on but was told that he should not attend the meeting as he was no longer working there. He told the MD that the company car and laptop were outside. He retained the company mobile phone and later gave the MD the new number in order to get his reference. He gave evidence of loss and stated that he had obtained alternative employment in June 2006.

On cross-examination he said that there was not enough investigation in the email incident and felt it did not warrant a written warning. When asked, he said that JH and R had emailed him in the past. He accepted that he had made a mistake with the email and had apologised to JH and R. He said that he had not bullied or harassed R. When put to him, he said that R had not had an issue with him. He said that he could not control if people had not liked the email.

When put to him, he said that he did not feel that the offer of a position as I.T. Manager was a sincere offer. When put to him that the MD gave him 100% support, he said that the MD had said to him "look at the state of you in the office". The claimant said that two weeks after being offered the new position he was asked for his resignation. The claimant did not accept that he was "in a state" on the morning of the launch and had not said he had been up till 5.30am drinking. He refuted he had been given a second written warning on March 1st.

When asked by the Tribunal, he said that he had not been given a copy of the second written warning to keep and had not asked for a copy of any letters before March 13th 2006 or before the date of the hearing before the Employment Appeals Tribunal. He said that he had taken instructions from his solicitor. He again stated that the email had been inappropriate to send. He had expected a verbal warning and to apologise to the two females, which he had.

One of the claimant's clients (D) who attended dinner and drinks with his colleague and the claimant on the night before the launch gave evidence.

They met in the bar around 8.30pm. and had dinner. The claimant left them for a while and later returned. The three of them went into town. He said that the claimant had about five drinks in total all night and had not stayed up until 5am. The claimant tried to get them up the next morning and had not looked drunk or dishevelled. He could not remember if he had driven to the lunch on February 23rd.

On cross-examination he said that on the day of the launch he had been upstairs in the office having coffee. When asked, he said that he and his colleague had had about 10 drinks the previous night. He said that he could not recall how many times the claimant had come down to check on them and stated that he and his colleague and returned to the hotel with two friends. The claimant had not

brought anyone back to the hotel. When asked, he said that he had driven his car the following day after breakfast and coffee.

Respondent's Case:

The Manager of the respondent gave evidence. He had greeted the claimant at the launch meeting on February 23rd 2006. He smelt alcohol off him and said that he had seemed more hung over than the claimant's witness (D) on the day in question.

On cross-examination he said that the claimant had bloodshot eyes that morning and he had passed by him a few times that morning. When asked he said that he had been asked two weeks before the day of the hearing to attend as a witness. The MD had not discussed the matter with him before then.

The MD gave evidence. He said that the claimant had been a good employee but had personal problems in March 2005. He tried to support the claimant. His performance went downhill. He also knew the claimant had a health problem. He was offered an I.T. position but the claimant told the witness that he wanted to leave, he wanted a commercial role and had a problem with R. The claimant was informed that R was leaving. The witness received a letter from the claimant's solicitor stating the claimant being bullied. He replied. When asked he said that when the claimant mentioned the problem with his laptop and he had mentioned a website and said it could be a virus. He had the same virus problem with his laptop from time to time.

In January 2006 the claimant informed him that he was leaving in February or March that year. He emailed the claimant in the end of January to find out what was happening and was told that the claimant was deferring his move till March or April.

The witness told the Tribunal that he had received complaints about the smell of alcohol off the claimant on the morning of the launch. He thought over the matter and decided to issue a second written warning. He told the Tribunal that he could have issued warnings in the past over the claimant's work but had let it go because of his health and personal problems. At the meeting of February 28th the claimant had taken the second written warning outside to read it. On March 13th the claimant told the witness that he was resigning and had another job.

On cross-examination he explained that JH had been hired to work to the claimant. JH told the witness that the claimant was very upset about his personal problems and was always on the phone.

When asked he said the R had come to him on October 7th 2005 about the email she had received from the claimant. He read it then rang her back. He said that she was very upset about it and especially that it had only been sent to the female staff. He told the Tribunal that he had to take her complaint seriously. It was a difficult position and he had to act on it. He had considered a verbal warning but because of the content of the email he decided to issue a written warning. When asked he said that he did not know how the claimant and R got on. R did not want the claimant to know she had complained about him. The claimant apologised to both female staff.

When put to him, he said that he had mentioned the smell of drink off the claimant on the day of the launch to him. The witness said that he had spoken to the claimant about the launch one week later, after receiving some complaints. He said that he had considered instant dismissal but decided to issue a second written warning.

On March 1st 2006 the claimant was given one piece of paper at the evening meeting, a second written warning. The claimant said that it did not matter as he was leaving. He told the claimant that he could hold on to the car for a few weeks. He said that he had not forced the claimant out. The claimant said that he would sign a letter of resignation. The witness typed a letter of resignation and the claimant signed it.

Determination:

Having heard all the evidence adduced the Tribunal finds that the claimant tendered his resignation and therefore his contract was broken. Therefore the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)