

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD758/2006

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. J. Walsh
Mr. F. Barry

heard this claim at Dublin on 30th July 2007, 31st July 2007 and 1 August 2007.

Representation:

Claimant: Gerry McCormack of SIPTU, 7th Floor, Liberty Hall, Dublin 1.

Respondent: Mark Connaughton SC instructed by Aoife Newton of IBEC, 84/86 Baggot Street Lower, Dublin 2.

The determination of the Tribunal was as follows:-

Respondent's evidence:

The first witness for the respondent was a former cash services manager who was responsible for cash in transit and ATM replenishment. The incident that led to the claimant's dismissal occurred on the 18th April 2006 the Tuesday after a Bank Holiday. This was a particularly busy day in the control room. At the time of the incident the control room was a man down.

The witness first heard of the incident when he was phoned at home at about 7.20am on the day, by a colleague. He was informed that the control-desk officer had been sent home and wished to speak to him. The witness met the control-desk officer at a hotel convenient to them both. He took notes of the meeting. There had been a mix up over a Garda escort for a truck. The escort was turned away in error, as the truck was still being loaded. There followed an argument between the officer and the claimant who was the supervisor. The officer was pushed against a locker. The supervisor then sent the control-desk officer home. At the meeting he said his shoulder was sore and there was a button missing from his shirt. The witness told him to continue home.

When he reached the branch, the witness phoned the claimant and asked for an account of what happened. He then looked at CCTV pictures from the control room, the pictures seemed to confirm the control-desk officer's account of events. When cover was arranged for the claimant in the control room, he came up to the office. The claimant was aggressive and started shouting when asked about the incident. The claimant was asked to take 5 minutes out to calm down. He refused and said he was going home sick. He did not give an account of the incident. The witness sent the claimant a letter by courier, asking for a meeting to discuss the incident. Alternatively the claimant was asked to supply a written statement. The witness spoke to and took statements from the others who were present when the incident occurred. He also looked at the CCTV pictures from the control room.

A meeting was organised on 24th April 2006, to investigate the incident. The claimant had no recollection of any physical contact between himself and the control-desk officer. At the meeting on 26th April 2006, the HR director summarised the information gathered in the investigation. Copies of statements and CCTV footage were given to the claimant. The claimant produced his account of the incident at this meeting. A further meeting was arranged for 3rd May 2006.

At the meeting on 3rd May 2006, the HR director said that all the information would be reviewed and the claimant given the opportunity to respond. The claimant's representative asked to be provided with signed statements from those who were present at the incident. After the meeting the witness arranged to have the statements signed. One man revised his statement before signing it.

The witness attended the meeting on 10th May 2006 where the evidence collected by him was reviewed. The claimant was dismissed by the HR director in a letter that issued following a meeting on 26th May 2006 at Liberty Hall. The decision to dismiss was not made by the witness. His role was to investigate and report to the HR director.

The ATM control officer gave evidence. He was in the control room when the incident occurred. There was no third man on duty, to release the cash in transit vans. The claimant went to the window, it was the Garda escort for the AIB truck. Their colleague said the truck was gone, however the man in the vault said that the truck was still loading. An argument followed, and the claimant sent the other man home. He did not see what happened, he was seated and the LCD screens blocked his view. The cash services manager check this after he took his statement.

The witness accepted that the push did not show up in the CCTV stills shown. The witness stated that in his view only the Garda had been in a position to see what had happened.

The Garda gave evidence. He was on duty in the control room when the incident occurred. He was then attached to the divisional crime unit. The claimant answered the intercom and told the escort to go. An argument started between the claimant and another man when the claimant realised that the truck requiring an escort was still on the premises. The claimant pushed the other man with his hands. At first he thought the argument was only banter, he realised it was serious when one man pushed the other and then sent him home.

The HR director gave evidence. The company has approximately 3,500 employees. Some matters of discipline are dealt with by line managers, but a serious matter would be referred to himself. A union agreement is in place. Clause 20 of the Disciplinary Procedure lists examples of gross misconduct. He had a number of dealings with the claimant, as he was a trustee of the pension scheme.

A number of escorted vans go out every day. A van is not released without an escort. When the claimant thought that a truck had left without an escort he did not check. He failed to say – Surely you did not let a truck with valuables out without an escort.

The HR director heard of the incident when the cash services manager phoned him on the afternoon. He did not give him any instructions.

At the meeting on 10th May 2006 at company offices, he reviewed the statements and considered comments on the evidence. He felt the claimant was attempting to frustrate the investigation and he had not produced a clear statement of what happened. When he wrote to the claimant on 12th May 2007, he had formed of what had happened. There was physical contact, and the claimant was the aggressor. The investigation was concluded and the matter was now one of disciplinary procedure. He believed that disciplinary action was justified. At this time he had not decided to dismiss the claimant, he invited representations in relation to the investigation or in relation to his conclusion that there had been misconduct.

At the meeting on 26th May 2006 the claimant's representative read a statement into evidence. The statement was conciliatory in tone. There was a disconnection between the claimant and his representative. There was no acceptance by the claimant of the situation. He continued to argue. Following this meeting the HR manager made the decision to dismiss the claimant. He sent the letter of dismissal to the claimant that day.

He had considered other sanctions. However there could have been further incidents if the two men worked together again. He would not return the claimant to a position of authority in the control room. Also the claimant did not reflect on his behaviour.

The claimant appealed the decision to dismiss. The appeal was unsuccessful

Claimant's evidence

The claimant gave evidence. He was working as the control room supervisor on the day of the incident. He had 22 years service with the respondent. Under normal circumstances he started at 8.00am, on this particular morning he came in at 7.00am to relieve another man.

At 7.10am the door-bell rang. The Garda enquired about the van going to the Central Bank, Ballsbridge. He asked his colleague and relayed the information to the Garda that the car was gone. Another man informed him that the van was still there. He went back to the window but the Garda had gone.

He asked the first man how a van could go without an escort. He was concerned because a competitor had a van without an escort robbed. The witness went to close the door to the vault, and the first man came towards him with clenched fists. The argument continued and the first man ended up with his back to the lockers. The first man insisted that he had given correct information. The claimant said that he had no recollection of pushing him against the locker. The claimant thought the incident was due to a number of factors, the control room is small, the photographs shown in evidence give a misleading impression of the size. Three radios and several phones are in regular use. There are problems with the air conditioners fumes from the vans are a problem. The Tuesdays after Bank Holidays are some of the busiest days of the year. If a truck left without an

escort the claimant believed he would be held responsible.

After the first man left, the claimant was fairly busy. The cash services manager phoned him for a report, he told him that he has no time to make a report. The claimant phoned upstairs to ask to have staff redeployed downstairs. No one answered the phone upstairs. When he was relieved the cash services manager asked for a report and was annoyed when he did not have it. The claimant was not advised that the incident could result in disciplinary action. The meeting with the cash services manager was not a good one.

The claimant went home because he was stressed. Later he phoned the control room to say he would be fit in the morning, but was told that he would not be allowed in. He was told that he would have to contact the cash services manager. Then the courier arrived with the letter.

The claimant felt that the letter was vague and dealt with his sending the man home. He felt that he made the right decision in sending the man home, otherwise the situation would have got out of hand.

At the first meeting, the claimant wanted a statement from the Garda escort to clarify which truck he asked for. A truck leaving without an escort would be cause for serious concern. He was always cooperative with the investigation of the incident. He wanted to draw a picture of the difficulties in the control room, but the cash services manager did not want to listen.

At the final meeting, the claimant agreed with the statement made on his behalf by his representative, he was fighting for his job. At the same time he was defending himself every step of the way. He pleaded not to be dismissed. He hoped to be reinstated. He had good working relationships with the people on the road. The incident lasted less than 3 seconds, it would not prevent them working together again, they always did a good job in the past.

The claimant had obtained another job, working as a static guard. His salary is approximately €600 per week. He does not work overtime nor is he paid a Sunday allowance.

The claimant's union representative gave evidence. After the incident both men were suspended. The HR manager felt that the other man was not the aggressor, but he outlined how he should have behaved. The other man received a warning and returned to work.

The claimant's colleagues supported him. They felt that he could do his work.

The vault worker gave evidence. He was at work when the incident occurred. He was walking from the back of the vault to the control room door. The other man flew up, his chair fell back and a sheet of paper slammed down. The witness only came forward with a statement for the claimant's appeal hearing.

The scanning officer gave evidence. Usually he worked on access control, but on the day of the incident they were a man down so he was scanning bags just outside the control room door. He saw the claimant and the other man belly to belly, but did not see a push. The claimant's hands were out from his sides.

Determination

By a majority the Tribunal is of the view that the dismissal in this case was fair. Having considered the evidence the Tribunal is satisfied that the incident complained of did in fact occur. A wholly independent witness, the garda, gave evidence, which was accepted by the majority of the Tribunal. The garda was in the best position to see what happened and he was in the room at the time of the incident.

Given that the claimant was in a management role, responsible for staff in that area, the level of responsibility required in that role regarding safety and the day to day management of staff with problems and issues, it is critical that the manager be capable of dealing with contentious issues while operating within company procedures and guidelines and at the same time maintaining objectivity in dealing with those issues. On the evidence the Tribunal does not accept that the claimant adhered to the relevant guidelines. Bearing in mind the incident, which they are satisfied occurred, and the position of the claimant, the sanction of dismissal was reasonable.

Mr. Frank Barry inserts the following dissenting view.

The evidence adduced does not demonstrate substantial grounds to justify dismissal. The claimant had 22 years of satisfactory service with the respondent. On the day of the incident the claimant reported for work early, to oblige a colleague. The control-room was particularly busy that morning and it was also understaffed. The incident itself was not significant. It did not show up on the CCTV stills, therefore it lasted less than 3 seconds. There was an argument between the two men but it did not constitute misconduct that would warrant the sanction of dismissal.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

Signed _____
(CHAIRMAN)