

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD398/2007

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó' Catháin

Members: Mr. M. Forde
Mr. D. McEvoy

heard this appeal at Cork on 15 & 16 January 2008

Representation:

Claimant:

Mr. Paul Christopher B.L. instructed by Mr. Kieran Riordan,
Kieran Riordan & Co. Solicitors, 14 Princes Street, Cork

Respondent:

Mr. John Lucey B.L. instructed by Ms. Eimear Harrington,
Barry M. O'Meara & Son Solicitors, 18 South Mall, Cork

The determination of the Tribunal was as follows:

The claimant had worked for the respondent at its oil refinery since 1984. The claimant had been involved in disciplinary procedures on previous occasions; he had received a written warning following aggressive behaviour towards visitors to the refinery on 19 October 2005. The refinery operates a continuous process 24 hours a day, seven days a week, 365 days per year. At the time of the events that led to the dismissal the refinery had just been shut down for the first time in five years and was undergoing start up. The claimant was employed as a process technician, a safety critical position. Start up is one of the most critical times during the operation of the refinery and technicians are expected to remain at their posts continuously in order to monitor the instruments in their area. The need for comfort or meal breaks was to be notified to the control room so that operations in the claimant's area could be monitored and appropriate cover provided.

During the start up, on 26 November 2006, the claimant was found by the shift supervisor to be sat with his feet up watching a rugby match on a portable television he had brought in to work with him. The respondent's position was that this action by the claimant was in breach of company

procedure and constituted serious misconduct. The claimant was informed of his suspension with pay, pending investigation of the incident, by letter of 27 November 2006. At an investigative meeting on 28 November 2006 the claimant was informed of the appointment of an investigative team comprising the Finance Leader, the Area Leader and a shift supervisor. The claimant was then called to a disciplinary meeting on 8 January 2007. The claimant attended this meeting with his representative and three people on behalf of the respondent, including the Head Executive and the Human Resource manager. The claimant's position was that he had only watched television for a few seconds and the safety of the refinery had not been compromised by his actions, he had his personal radio and mobile phone with him at all times. The decision to dismiss the claimant was communicated in a letter dated 11 January 2007. The claimant appealed the decision to dismiss him but did not attend the appeal hearing on the advice of his union representative. The decision to uphold the dismissal was conveyed to the claimant in a letter dated 23 February 2007.

Determination:

Whilst the respondent alluded to the fact that there had been other issues involving the claimant over a period of time the Tribunal is satisfied that these matters are not at the core of the decision to dismiss and do not constitute gross misconduct. In any event the written warning the claimant received was more than twelve months before the incident in question here and must be considered as spent. The start up, an event that occurred every five years, was clearly a high-risk operation requiring staff to be on high alert. This was the most critical part of the operation of the refinery. With his twenty-two years experience with the respondent in a safety critical position the claimant was well aware of this. For all these reasons the Tribunal is satisfied that the conduct of the claimant in regard to his attitude to the start up was such as to constitute substantial grounds, amounting to gross misconduct, justifying the dismissal. It follows that the dismissal was not unfair and the claim under the Unfair Dismissals Acts, 1977 to 2001 must fail

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)