

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

CASE NO.
UD931/2007

against the recommendation of the Rights Commissioner in the case of:

Employee
v
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms M Levey

Members: Mr M Murphy
Mr P Trehy

heard this appeal at Dublin on 9th January, 13th March and 14th March 2008

Representation:

Appellant : Mr John Bolger, ATGWU, 55/56 Middle Abbey Street, Dublin 1

Respondent : Mr. Barry Walsh, A & L Goodbody, Solicitors, I.F.S.C.,
North Wall Quay, Dublin 1

The determination of the Tribunal was as follows:

Respondent's Case:

The appellant was issued with a final written warning on 16th January 2007 for clocking irregularities. This had been preceded by written warning on 13th October 2006 for similar issues. On 18th January 2007, two days after the final written was issued, the appellant was observed leaving work before the official clocking out time of 4.30pm by two managers, the Human Resources Manager (HRM) and the Hygiene Services Manager (HSM). Both managers saw the appellant leaving the car park in his van before the surge of people came out of A Block after clocking out at 4.30pm. As HRM was a witness in this incident, the investigation was conducted by the Acting Human Resources Manager (AHRM). At the same time, the appellant's Line Manager (LM) was waiting to give the appellant his payslip at the clocking area before 4.30pm, but the appellant wasn't there. LM checked the clock system and found that the system had registered the appellant clocking out at 4.30pm. LM concluded that the only explanation could be that someone else had clocked out the appellant. LM contacted the Plant Manager (PM) about the non-appearance of the appellant. When PM contacted HRM, HRM explained that he had seen the appellant leaving before 4.30pm. The next day the appellant was suspended with pay and an investigation was initiated. The appellant was

dismissed on the 12th February 2007 following an appeal hearing.

From July 2005 to November 2006 the appellant was issued with 16 new clock cards after reporting that his clock-in card had been taken out of the rack where cards were kept. Due to the number of issues the appellant had with clocking he was supposed to report directly to a manager if he had a problem clocking. On 8th September 2006 the appellant was not clocked in and was not seen by his team leader until approximately 8.20am. The team leader had looked for the appellant, including in the canteen area, but could not locate him. The company did not accept that the appellant had clocked in at 7.55am and that it hadn't registered, as the clock system records even failed attempts. The company also didn't accept that the appellant had gone straight on his break as he wasn't in the canteen, the area designated for breaks. The appellant was issued with a written warning on 13th October 2006.

On 13th November 2006 the appellant was unable to clock in as his card was missing. The appellant was issued with a new card which he could hold himself instead of leaving on the rack. On 20th November the appellant said the card wasn't working, but on examination, it turned out to be the card that had been reported missing. PM, who investigated the incident, did not believe the appellant's explanation that it had been mixed up with his bank cards and a final written warning was confirmed on 16th January 2007.

After a meeting on 1st February 2007 the appellant was notified of his dismissal by AHRM. The appellant was also advised that he could appeal the decision at a meeting on 12th February 2007. At the meeting to appeal the dismissal on 12th February 2007 the Human Resources Manager Supply Chain (HRMSC) suggested that if the outcome of that meeting was to dismiss the appellant, the appeal hearing for the final written warning and the dismissal could be heard together at a later date. This was agreed to by the appellant's union representative.

The respondent company refuted the appellant's assertions that there was a conspiracy against him. The 25 allegations of bullying and harassment made by the appellant, over the last two years of his employment, against five managers had all been investigated and were not upheld.

A witness for the respondent company, a team leader (TL), gave evidence that on 22nd January 2007 he was approached by the appellant. The appellant asked him to confirm to management that, on a previous occasion in the gent's toilet, TL had told the appellant that management were out to get him. TL denied he had ever made such a statement and informed his manager of the incident. TL had never discussed bullying with the appellant. The respondent company questioned why this conversation had not been raised during the investigations into harassment and bullying.

The respondent company insisted that the correct procedures had been followed regarding the dismissal. The appellant was represented by a union official at all meetings. The only unusual aspect was the fact that the dismissal incident came so quickly after the final written warning was issued, but this was due to the appellant's actions.

Appellant's Case:

The appellant disputed that he had left the premises before 4.30pm on 18th January 2007 and stated that he had been at the clock at 4.30pm and had clocked himself out. The appellant had worked for the company for over 13 years without incident. Problems began approximately six months prior to his dismissal after he reported that the electronic eye device, for the conveyor belt system, wasn't working properly. The appellant felt that his complaints were not responded to effectively. Over that period he made twenty-five complaints of harassment against five managers. The

ppellant claimed that at one point a team leader had put his arm around him in the gent's toilets and told him that management were out to get him. In one instance stickers had been put on his van as it had been parked incorrectly, although it was in the same place he normally parked it. The appellant requested that the stickers be removed from the paintwork of his van and the company sent him to a garage in Glasnevin. While at the garage a manager from the company pulled into the garage to get his car valeted and another drove past. The appellant considered this to be surveillance of his movements.

On a previous occasion the appellant was issued a written warning for being late for work on 8th September 2006. The appellant maintained that he had arrived on time and had gone straight on a break. The appellant produced a witness, a company manager, to corroborate his position that he had been on time and had said hello to the witness. The manager gave evidence that he could not have seen the appellant as he had been on the 2pm to 10pm shift all that week and had not been at the factory at any other time.

A witness for the appellant, a co-worker (CW), gave evidence that he saw the appellant behind him in the queue for the clock before 4.30pm on the 18th January 2007. CW didn't see the appellant clock out. The witness also saw the LM waiting around the clock at that time. The witness went to the union the next day, to let them know he had seen the appellant, when he heard that the appellant had been called to a meeting. CW said that while there was a possibility that he had been mistaken on which day he had seen the appellant, it was unlikely.

Determination

The Tribunal finds there was sufficient justification to issue the final written warning to the appellant. The evidence of the appellant's witness did not support the appellant's version of events and there was no record of any attempt being made to clock-in in circumstances where the clock-in machine registers even failed attempts.

Regarding the first incident that led to the dismissal, the tribunal accepts the evidence of the respondent that the appellant had in fact absented himself from work prior to the official clocking-out time of 4.30pm. While it is the case that the appeal of the final written warning had not been determined that procedure was overtaken by events of the 18th January 2007 and thus the dismissal in the circumstances was warranted.

The appeal under the Unfair Dismissals Acts, 1977 to 2001 therefore fails and the recommendation of the Rights Commissioner's under those Acts is upset. The Tribunal makes no award to the appellant.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)