

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD1265/2006
MN831/2006

Against

Employer

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2001
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Hayes

Members: Mr E. Handley
Mr J. Maher

heard this claim at Dublin on 2nd May and 2nd October 2007

Representation:

Claimant : Mr. Gerry Flanagan, Assistant Secretary, SIPTU, Liberty Hall, Dublin 1

Respondent : Mr. John Donnelly B.L.,
instructed by: Gaffney Halligan & Co., Solicitors, Artane Roundabout,
Malahide Road, Dublin 5

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 was withdrawn at the outset of this hearing.

Respondent's Case:

The respondent is an organisation established for the rehabilitation of people who have been adversely affected by their dealings in drugs and other substances. A co-ordinator (PH) who commenced employment with the respondent in August 2006 outlined his relationship with the claimant. The co-ordinator who was responsible for the general day to day running of the centre was answerable to the board of management. He was also the claimant's direct supervisor. The claimant had been furnished with a contract of employment and a "welcome pack". The latter included a grievance procedure in addressing staff complaints.

PH invited the claimant to his office on 26 September 2006. Prior to that meeting the claimant had been absent from work for some time. Specific issues relating to the claimant's attendance record and his treatment of clients needed to be discussed. In the course of that short meeting the claimant clearly indicated he did not consider PH to be his supervisor. He became highly agitated and angry

and at one stage the witness felt at some risk to his safety. No actual engagement occurred and the witness was “dumbfounded” at the claimant’s behaviour, which he said, came out of the blue. The witness subsequently informed the board of management of that event. The chairperson/staff liaison officer (KB) together with PH met the claimant again later that day. The claimant’s behaviour did not moderate during that meeting either and PH’s involvement with this situation then ceased.

KB stated he was a contact between staff and the board of management. Following a meeting with the claimant and a co-ordinator on 26 September 2006 KB informed the claimant by letter that he was suspended to facilitate an investigation into the claimant’s alleged behaviour towards another staff member. Prior to the issuing of that suspension the claimant had “lost the plot” during that meeting. He expressed lots of anger, and generally cursed his way through the proceedings. The witness added that he told the claimant he was not being dismissed. That letter listed three allegations against the claimant.

The witness together with another member of staff (CB) met the claimant and his representative at an investigatory meeting on 28 September 2006. That meeting was adjourned at the claimant’s request as he wished to seek legal advice on his situation. By the time it reconvened the witness had completed his preliminary investigation and had statements from staff members on the three allegations against the claimant. The witness promised the relevant staff members, apart from the co-ordinator, that their statements would be kept confidential and therefore he did not furnish the claimant with copies of those statements. The claimant did not accept the essence of the allegations against him. Of the three allegations listed in the letter of 26 September 2006 KB was certain that two of them happened as alleged and that the third one was less definitive. KB submitted his findings to the board of management. He compiled a report for the Board of Management which consisted of two recommendations, the first of which was not to sack the claimant, but to clarify his role and to retrain him in relation to anger management. The second recommendation would have led to his dismissal. At an appeal hearing in November 2006, (attended by KB, claimant, CS, and CB) he said that the claimant had no new evidence to offer, and just denied that anything had happened. The Board accepted the first recommendation, and the claimant was required to accept the conditions laid down by letter on 8 November 2006 and to respond no later than 14 November 2006. The witness stated that no response was received by the date required. A response was received from a Trade Union official after the time limit. In answer to a question from the claimant’s representative as to why no right of appeal was offered to him, witness said that the claimant never sought it, and that no letter or phone call was received from him expressing his unhappiness with the Board’s decision.

The witness was asked 1) was claimant dismissed because of refusal to accept conditions, rather than because of misconduct, and 2) was he given the chance to appeal against his dismissal. The witness answered yes to 1) and no to 2).

Claimant’s Case

JS said that she was working in the centre on 26th September 2006 and that she heard voices coming from the office, and further stated that she did not perceive the exchange to be of a threatening nature. She said that they were told that claimant was relieved of his duties, and that they were not to talk to anyone about it.

The Claimant said that he was informed by letter from KB that his employment had been

terminated. He said he was dismissed for not accepting conditions. He said that he had not been prepared to accept the conditions without negotiation. He informed his Trade union on 10 November 2006, and the official rang the company the same day to say they would be appealing the case. He said he had not worked since. He told the Tribunal that he has a taxi licence but that he holds it as an investment and that he does not use it. He was asked why, if he had concerns over issues at work, why he did not express them. He said he was concerned but didn't put it in writing. He was then asked why he did not accept conditions. He answered because they only related to himself and not to all staff. He was then asked why he objected to point 1 in the letter of 6 October 2006. He said that he didn't know what they meant by "updated", it wasn't clear. He was also asked what was wrong with point 2. He stated that he wasn't happy with the Board's decision, it was a stressful time. Then he was asked what was his anxiety over the recommendations. He said "why me", it should be aimed at all staff. He said that after the initial appeal was unsuccessful, he intended to appeal to a third party, but did not get the opportunity to do this.

The Claimant was asked if it was found that he had been unfairly dismissed, what his preferred remedy was. He said at the time it was re-instatement, but now it is compensation. The respondent stated they would also prefer compensation as a remedy.

Determination:

The determination of the Tribunal was as follows:

The Respondent company provides recovering drug addicts with rehabilitative support. The Claimant was a supervisor employed by the Respondent. His employment commenced in June 1997. It ended on 15th November 2006.

The Claimant had a meeting with PH, the general manager, on 26th September 2006. PH told the Tribunal that the Claimant was angry and abusive. As a result, PH informed the Chairman of the Board of Management (hereinafter referred to as the "BOM"), KB, who was also the official responsible for liaison between staff and the BOM. KB came to the centre within an hour. He met PH and the Claimant. The Claimant was again aggressive and KB asked him to leave the premises.

A sub-group of the BOM, comprising KB and CB, was established to investigate the matter. It was made clear to the Claimant that the investigation did not form part of the disciplinary process. Before interviewing the Claimant, KB had conducted some preliminary investigations. The information obtained during these preliminary investigations was not given to the Claimant. He was not, therefore, fully informed of the allegations being made against him. The reason given for this was that the sub-group was not engaged in a disciplinary process.

The sub-group made a report, together with recommendations, to the BOM. The BOM meeting was chaired by KB. On 5th October 2006, KB, on behalf of the BOM, wrote to the Claimant and told him that, on foot of the investigation, a disciplinary meeting would take place on 24th October 2006. This meeting never took place. On 6th October 2006 KB, on behalf of the BOM, again wrote to the Claimant. This time the Claimant was told that the BOM had determined that allegations of "verbal aggression, harassment/abuse and non-co-operation have been proven." The Claimant was further told that the BOM had determined that the appropriate sanction was a final written warning. The Claimant was further told that certain conditions were to be agreed before he could return to work.

The allegations against the Claimant were found to have been proven, without there ever having been a disciplinary hearing.

The Claimant exercised his right of appeal. KB heard the appeal. He told the Tribunal that the Claimant proffered no new evidence and that he did not make any complaint about the procedures that had been adopted. KB reported as much to the BOM who decided, on the basis that there was no new evidence, not to change its decision.

The Claimant did not indicate his acceptance of the BOM's conditions before the stipulated date. On that basis he was dismissed.

The Tribunal is satisfied that the Claimant was given sufficient warning that, should he not accept the conditions, dismissal would ensue. However the Tribunal must consider the circumstances that led to the dismissal. The Tribunal is satisfied that there were significant procedural flaws in the disciplinary process that was the genesis of the dismissal. Firstly, the Claimant was never properly informed of the allegations against him. Secondly, what the Claimant was told was an investigatory meeting that did not constitute part of the disciplinary process turned out to be, in effect, the disciplinary process. Thirdly, the Respondent went from investigation of the allegations to sanctions without any intervening disciplinary process. Fourthly, KB chaired the investigatory sub-group, chaired the BOM meeting that determined that the allegations had been proven and heard the appeal. These roles ought to have been split.

An appeal in a disciplinary process is more than a matter of mere form. It provides a safeguard in the form of a second chance for an employee. However, it also provides a safeguard for an employer in that it gives him an opportunity to ensure that a disciplinary process has not been unduly harsh. Neither the employee nor the employer is well-served when the same person conducts the initial disciplinary process and the appeal process.

The Tribunal is satisfied that, by reason of procedural infirmity, the Claimant's dismissal was unfair. However, the Tribunal is of the opinion that the Claimant contributed, to a degree, to his own dismissal by not engaging in any way with his employer in respect of the conditions. The Claimant has not worked since his dismissal. The Tribunal is not satisfied that the Claimant made sufficient efforts to mitigate his loss. In all the circumstances, and taking account of the preference of the parties, the Tribunal is satisfied that compensation is the appropriate remedy. Therefore, in respect of his claim under the Unfair Dismissals Act, 1977 to 2001, the Claimant is awarded damages in the amount of €20,000.00 as being just and equitable in all the circumstances.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

