

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.UD1053/2007

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P O'Leary B L

Members: Mr M Flood
Mr B Byrne

heard this claim at Dublin on 18th March 2008 and 30th May 2008

Representation:

Claimant: Colm O'Cochlain & Co, Solicitors
First Active House, Blessington Road, Tallaght Village, Dublin 24

Respondent: Mr. Tim O'Connell,
IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

Respondent's Case:

On Thursday 28th June 2007 the Transport Manager (TM) of the respondent company emailed the Dispatch Unit with an instruction to complete a form for Air Canada detailing the number of meals being loaded onto their flights. The bottom of the form stated 'prepared by:' and a blank space for signature. TM received an email from the claimant, a manager in Dispatch Unit, the following day saying that he didn't feel he could sign the form and that he would have to discuss it with his union representative. TM instructed him to complete the form and email it to Air Canada that day, if necessary under protest, as outlined in the Memorandum of Association. The claimant replied by email that he would not sign the form.

TM discussed the issue with the General Manager (GM) on Friday, and emailed him on Sunday informing him that he was going to dismiss the claimant at a disciplinary hearing being held the next day, for failing to carry out a reasonable order. GM knew there was a possibility that the matter would be appealed to him at a later stage and maintained that he had only given procedural advice to TM. On Monday TM called a meeting with the claimant and the claimant's union representative. The claimant continued to refuse to sign the form and was

verbally abusive, although he apologised for this the following day. A further meeting was held the next day at which the claimant was dismissed with immediate effect. At the appeal meeting, held on 20th August 2007, GM upheld the decision to dismiss the claimant.

Claimant's Case:

The claimant had been employed by the respondent company since 1998 and had worked his way up to the position of manager in the Dispatch Unit.

The claimant took issue with signing the form for Air Canada, as dispatch unit had no involvement with the meals being prepared for, or loaded onto, the airplane, and it was a function previously carried out by customer service. The claimant did not believe that the request to sign the form was reasonable, but rather that it would be fraudulent, as he could not confirm that the items had been loaded onto the plane. The claimant did not wish to work under protest for this reason.

The claimant did not have time to consult with his union representative prior to the meeting on Monday morning. He apologised the following day for his language at the meeting on Monday.

At the appeal meeting, held with GM and the claimant's union representative, the claimant was not advised of all relevant information. The claimant was not shown an email from TM to GM about the dismissal or given details of GM's investigation into the matter when he had discussed the issue with other members of Dispatch Unit. A large number of documents were given to him at the start of the meeting, but he did not have time to look through them all. Although the claimant was aware of it, he was not informed at the meeting that another staff member had raised the issue of the form and that the form was subsequently changed.

Determination:

On the evidence presented to the Tribunal it was clear that the issue in this case centred on the question of whether the instruction to sign a form could be interpreted as the claimant's verification that certain meals were loaded onto Air Canada airplanes. In the evidence presented to the Tribunal it was clear that this form was amended, after the claimant's dismissal, by the insertion of a note clarifying that the person signing the form was not personally verifying that they had supervised the loading of the meals. This, in the opinion of the Tribunal, was a significant factor in the case.

It was clear from the Memorandum of Agreement that the claimant in normal circumstances could not refuse a reasonable instruction to perform a duty. The question that then arises is; is it reasonable to instruct an employee to perform a function that could be considered fraudulent? The Tribunal must answer in the negative. The Tribunal determines that this was a trivial matter which had no major import to the company, financially or otherwise, and could have been corrected had a reasonable approach been taken to the incident. An employee is required to obey all reasonable instructions from an employer, but should only do so where those instructions are lawful. An instruction that could be considered fraudulent is not a lawful instruction. In addition it is clear from the evidence that the claimant's manager had made up his mind to dismiss the claimant before meeting him. It is also clear from the evidence that the form was changed to reflect the answer to the problem perceived by the claimant within days of the claimant being dismissed. The claimant, on the other hand, by his use of bad language at one of the meetings, heightened tensions between the parties. His contact with his trade union prior to and during the hearing for advice, conducted by his line manager, at the meetings of the 2nd & 3rd July 2007 would not have assisted the matter in any way.

The appeal was flawed insofar as the person hearing the appeal was fully acquainted with all the facts through emails and conversations with the claimant's line manager before, during and after the dismissal but before the appeal. The person hearing the appeal also failed to disclose all the relevant matters, which he had to consider, when hearing the appeal and failed to confront the claimant with his accuser at the hearing. The person hearing the appeal should have considered that the claimant had nine years unblemished record with the company and had been promoted on two occasions.

By reason of the aforesaid, the Tribunal determines that the claimant was unfairly dismissed and having considered the views of the parties determines that the most appropriate remedy in this case is compensation and awards the claimant the sum of €25,000.00 (twenty-five thousand euro) under the Unfair Dismissals Act 1977/2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)