

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

CASE NO.
UD984/2007

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr. A. O'Mara

Mr. G. Lamon

heard this appeal at Dublin on 19th February and 12th May 2008.

Representation:

Appellant: Mr. Niall Cavanagh BL instructed by Rosemary Scallan of Rosemary Scallan & Company, Solicitors, Menlo, Church Road, Greystones, Co. Wicklow.

Respondent: Mr. John Barry, Management Support Services (Ireland) Limited, The Courtyard, Hill Street, Dublin 1.

The determination of the Tribunal is as follows:-

Respondent's Case

The junior member of staff gave evidence. He was working on a jeep with a faulty turbo. He asked a colleague should he use a 14 socket. Then the claimant walked up behind him and pushed him in the back. He protested and he was pushed against the jeep and punched. The claimant said, 'I'm going to kill you'.

He had a drink of water and returned to work. His father collected him from work and later his mother brought him to the hospital. He got a sick note from the hospital.

He did not report the incident to the Gardaí because he did not want the claimant to be sacked.

The junior member of staff's mother gave evidence. He phoned her on 1st May 2007 saying he was sick. She could not collect him from work so his father left him home that day. At home he was unwell so she took him to hospital. He had bruises consistent with an assault. The next day she went to the company and told the service manager and the director that her son had been attacked. The service manager said the matter would be investigated.

The service manager gave evidence. On 1st May 2007, the junior member of staff came to him and

asked for time off. He said no, because they were busy. The junior member of staff looked pale. The next day his mother came and requested a meeting. Together with the director he heard what she said.

The director sent for the claimant's colleague. The man said he did not witness anything.

At the meeting with the claimant the director asked the questions and the service manager took notes. The claimant said that the junior member of staff called him a name and he had to defend himself. The claimant became aggressive and did not enquire about the junior member of staff. The claimant was suspended pending further investigation.

Other members of staff were questioned.

The general manager gave evidence. He phoned the claimant after he was suspended who said he wanted to resign, he did not want it hanging over him. The claimant did not resign. Later the claimant phoned and asked for his job back.

The director gave evidence. When he spoke to the claimant about the incident, he was told, it wasn't a big thing, there was no blood. The director thought this was an inappropriate remark. The director made the decision to dismiss the claimant. The letter of dismissal told the claimant that he could appeal the decision to the group HR manager. No appeal was lodged.

Claimant's Case

A former colleague of the claimant gave evidence. He worked for the respondent for 7 years. He was a friend of the claimant. He did not witness an assault, threat or push by the claimant on the junior member of staff on 1 May 2007. The witness did not intervene or separate the claimant and the junior member of staff.

Several days after 1 May 2007 he was asked to pack the claimant's tools.

He was working on a jeep on 1 May 2007, if an incident had happened he would have seen it.

The claimant gave evidence. He had worked for the respondent for more than three years. He received no written warnings and got on well with management. At about midday on 1st May 2007, he was leaving the portacabin when he bumped into the junior member of staff who then spat at him and said something rude. The claimant then pushed the junior member of staff away from him and walked away. The junior member of staff fell against a jeep. The claimant did not hit him and walked up the yard to reduce conflict.

On Friday morning the claimant was called to the office and suspended. No one accompanied him to the office. He did not complain about the behaviour of the junior member of staff, he regarded the incident as horse-play and thought that nothing would come of it. There had been no blood, so he did not regard the incident as serious.

The general manager phoned him. The conversation was friendly. The claimant asked 'is it yeah or nay'. In reply he was told it is not good. The claimant was asked to attend a meeting. He did not make an appointment to come in. The general manager suggested that the claimant should resign. Later, the claimant called to the respondent's premises and asked the general manager for his job back. He was concerned about his livelihood.

The claimant first knew he had lost his job when the service manager phoned him on 30th May

2007.

The claimant attended a meeting with the respondents on 26th June 2007. His letter of dismissal is dated 12th July 2007.

Determination

The Tribunal carefully considered all the evidence adduced in this case. An incident occurred that involved a young employee. The Tribunal is satisfied that the respondent acted reasonably in concluding that the incident was serious and warranted sanction. The Tribunal is satisfied that the procedures used by the respondent were adequate and that the matter was investigated expeditiously. The Tribunal finds that the dismissal was fair, accordingly the claim under the Unfair Dismissals Acts, 1973 to 2001 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)