

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NOS.

Employee

UD724/07
MN585/07

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. L. Ó Catháin

Members: Mr. M. Forde
Ms. H. Kelleher

heard this claim at Cork on 13th March, 1st July and 2nd July 2008

Representation:

Claimant: Mr. Dermot Sheehan BL instructed by Mr. Michael Joyce of Joyce & Co.
Solicitors, 9 Washington Street West, Cork.

Respondent: Mr David Gaffney of Coakley Moloney, 49 South Mall, Cork.

The determination of the Tribunal was as follows:-

Respondent's Case

The fact of dismissal was not in dispute. The claimant was dismissed, by letter dated 9th February 2007. The respondent's position is that the claimant was dismissed for gross misconduct.

The production manager gave evidence. Early on the morning of 2 February 2007, he went into the production area of the respondent's premises and saw an employee photocopying an A4 pad. He recognised the handwriting on the pad as that of the supervisor.

The production manager followed the employee into the IMC area and asked him if the pad was the supervisor's. The claimant said, no it wasn't. The employee handed the pad to the claimant saying, 'Here is your refill pad'. The claimant took the pad and said, ok.

While the production manager spoke with the employee about production issues, the claimant took the pad to the supervisor's desk. He put the pad in a drawer. A colleague helped him. The production manager asked the claimant what he was doing. The claimant told him he was looking for a stapler. The production manager took the refill pad, that he recognised as the property of the supervisor, and told the claimant and his two colleagues that it was a serious matter. The production manager went to consult the HR manager. The production manager returned to the IMC area and briefed the supervisor on what had happened. The supervisor was to answer the phones in the area himself. The supervisor searched for copied pages but did not find any.

The production manager and the HR manager met with the claimant later that morning. An employee was invited to the meeting to accompany the claimant when he declined to select someone himself. The claimant was given the opportunity to admit to what he had done. It took a long time to arrive at the truth. Three employees, including the claimant, took the hidden key to the supervisor's desk. They opened a drawer and removed an A4 pad containing the supervisor's handwritten notes and photocopied the notes. The pad was then returned to the drawer of the supervisor's desk.

At the meeting on 2nd February 2007, the claimant was suspended. A disciplinary meeting was held on 6th February 2007. At neither meeting were the difficulties the claimant and his two colleagues had with the supervisor mentioned. The HR manager had dealt with the issues.

The behaviour of the three employees amounted to a breach of trust. They took the pad and tried to cover up their action.

The HR manager gave evidence. The company philosophy is to engage with employees and to look for solutions not scapegoats. Trust is important. The individual takes responsibility for the outcomes.

She had been involved with helping the claimant and the supervisor resolve their issues. She felt that the matters were sufficiently processed. Difficulties that arose between the claimant and the supervisor were sufficiently processed.

On 2nd February 2007 the production manager asked her advice on handling the incident. Their priority was to find out what had happened. It was difficult to extract information from the claimant. He was evasive. He did not admit his actions. Eventually all three admitted wrongdoing.

The HR manager felt that trust was breached when they faced the mountain of work to establish what had happened.

An investigation meeting was held on 6th February 2007. The HR manager and the production manager met with the claimant, the HR administrator took notes. A colleague of the claimant came as his witness. At this stage the company had some clarity about what had happened. The claimant remained on suspension.

The HR manager led the investigation. There was no investigation into the atmosphere in the IMC area. Those matters were closed; she sat down with the claimant on 1st February 2007 to ensure closure. The decision to dismiss the claimant was taken by the HR manager and the production manager. She sent a letter of dismissal to the claimant on 9th February 2007.

The general manager gave evidence. He heard the claimant's appeal of his dismissal. He wrote to the claimant giving a list of the grounds for appeal. In reply the claimant drew attention to the other issues. The general manager did not investigate the background to the incident. He did not speak to the supervisor and neither did he ask the claimant why he had behaved as he had.

The general manager reviewed the procedures and upheld the decision to dismiss the claimant.

Claimant's Case

The claimant gave evidence. He worked as a repair technician for the respondent. He liked his job. He and his two colleagues had problems with the supervisor for about 6 months.

On the morning of the incident when he arrived at work, another employee was already there. His colleague came in then and they had a discussion of their difficulties with the supervisor. They were unhappy with the way the supervisor treated employees. Their discussion happened close to the supervisor's desk.

The colleague found the keys to the supervisor's desk and opened the drawer. An A4 pad with the supervisor's writing on it was visible. Before the drawer was opened the claimant did not know that the A4 pad was in the drawer. The employee took the pad from the drawer to photocopy it. When the employee came back in the company of the production manager, the claimant took the pad from him and put it back in the drawer. These events happened spontaneously.

Initially the claimant was evasive and made up a story about the event when asked by the production manager and the HR manager. By 11.00am the truth was known. He admitted his involvement in the incident. He dragged out the investigation to protect his colleague and fellow employee.

The claimant was not given the opportunity to raise the background to the incident at the disciplinary meeting. He raised the issue at the appeal meeting.

Determination

The claimant was clearly guilty of misconduct as defined in the company disciplinary procedure given to the Tribunal. The procedure used by the respondent was flawed. The HR manager should not have been involved in both the investigation into the incident and the subsequent disciplinary procedure. Accordingly, the Tribunal finds in favour of the claimant.

Taking the claimant's conduct into account the Tribunal awards him €1,000.00. The claim under the Unfair Dismissals Acts, 1977 to 2001 succeeds.

It was accepted by both parties that the claimant was paid minimum notice, therefore the case under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)