

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *claimant*

UD1236/2008

Against

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr B. Garvey BL

Members: Ms A. Gaule
Mr. P. Woods

heard this claim at Dublin on 25th March 2009
and 30th September 2009

Representation:

Claimant(s) : Mr. Declan Wade BL instructed by Mr. Maurice Leahy, Maurice Leahy
Wade & Co, Solicitors, Archway House, The Plaza, Swords, Co. Dublin

Respondent(s) : Ms. Deirdre Gavin, IBEC, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant gave direct sworn evidence. He commenced employment with the respondent in January 1998 as a service engineer. His duties included visiting client premises to maintain and repair electronic equipment. His normal working day was 8.30am to 5.30pm. The claimant had no difficulties in his employment until 2007.

On the 5 April 2007 the claimant along with a number of his colleagues had a morning coffee break in the local shopping centre. He was unaware that his direct supervisor was in the car park and was timing the length of this coffee break. When the claimant submitted his time sheets for that day he was summoned by letter to an investigative hearing. This hearing was in relation to discrepancies with the timesheet records versus the dockets. Two colleagues received similar letters. As a result

of this meeting on the 18 April 2007 he received a letter informing him that no further action would be taken in respect of these discrepancies and the matter was closed. This letter reminded the claimant to adhere to the procedures in place for completing the timesheets.

On the 21 May 2007 he received a further letter requesting him to attend an investigative hearing in respect of discrepancies into timesheet records and dockets submitted. On receipt of this letter he thought that he was going to be reprimanded again. After the first incident the claimant felt put out and he said he was a little less easy to work with and less co-operative. Before the coffee break incident he had a good relationship with both field service managers, but at this stage relations were less than good between him and these two individuals. They had not raised the problems they were having with his timesheets before this letter. The discrepancies raised, related to the period from the 4 May 2007 to 16 May 2007.

Present at this investigatory meeting was the interim HR manager, the two field service managers (GG and ND), the shop steward and the claimant. GG asked most of the questions. The claimant explained that at this stage his relationship with GG was non-existent. The discrepancies in the timesheets were put to the claimant. These discrepancies related to a location that the claimant claimed to be at but the respondent maintained he was at home, in one incident they refer to his car being seen at home by two other members of staff. Two other discrepancies were in respect of later times recorded on his timesheets than when he was in actual attendance at these client locations. The respondent had spoken to these clients who had advised the respondent of the times the claimant was in attendance. One of the dockets provided to one of these clients by the claimant showed no time of attendance while the other was illegible. When asked about these two discrepancies the claimant had nothing to say. The claimant was advised at this point that his actions could lead to dismissal.

The claimant admitted that on some occasions he would go home early if he finished a call at 4.30pm and would make telephone calls and do paperwork. He never asked for permission to go home early. When asked as to why two dockets would have two different times the claimant replied he would do that to reflect a full working day. He raised the issue that he was stressed and related it back to the previous incident. He said that the atmosphere at the meeting was strained and he found the line of questioning intimidating. During the course of the meeting the shop steward who accompanied him had only interjected in the proceedings three times. The timesheets were the only documentary evidence put to him at this meeting.

The investigatory meeting of the 24 May 2007 resulted in a disciplinary meeting which occurred on the 13 June 2007. When the claimant received the letter in relation to this disciplinary meeting he understood his job was in danger. He attended this meeting along with his shop steward. At this meeting no further evidence was put to him nor did the claimant proffer any more information in relation to the discrepancies. After a break in the proceedings the claimant was informed he would be issued with a final written warning. This final written warning issued to the claimant on the 14 June 2007.

On the 8 November 2007 the respondent wrote to the claimant requesting that he attend an investigatory meeting on the 12 November 2007 to discuss concerns they had with inconsistencies in his timesheets, activity report sheets and expense receipts. There were no documents accompanying this letter. His relationship with both field service managers had broken down at this stage. Up to the receipt of this letter he had no indication that the respondent had problems with his timesheets. He thought he was compliant with the instructions given to him in the final written warning and this letter was a surprise to him.

The proposed meeting of the 12 November 2007 did not go ahead as the claimant was on certified sick leave. While absent from work due to stress he sought advice from his solicitors in mid December. On his behalf, his solicitors wrote to the respondent on the 19 December 2007 advising them that it was the claimant's intention to appeal the findings of the investigatory and disciplinary meetings of the 24 May and 14 June 2007. This letter also referred to the claimant's stress and to the "long standing grievance" he had with the company. The claimant explained that this grievance related to the first incident and the deterioration of his relationship with his two field service managers.

The respondent replied to this letter through their solicitors on the 18 January 2008. This letter refused the claimant's appeal outlining that he did not avail of this process at the time. It also requests that the company doctor medically examine the claimant. The claimant attended the company doctor; he explained he was still out of work due to stress at this time. He felt he was put under pressure at work, he also felt intimidated by his superiors and that they were out to get him.

The claimant's solicitors wrote to the respondent's solicitors on the 7 February 2008 and they outlined the claimant's grievance with the respondent, stating that there was no grievance procedure in place for the claimant to register his concerns regarding the completing of time sheets. This letter also states that the claimant's grievance predated the disciplinary procedures against him. The claimant explained that this letter reflected his grievance with the respondent, at this time he was still on anti depressants and on stress related sick leave.

The respondents' replied to the claimant's solicitors on the 19 March 2008, also enclosing the letter of the 14 June 2007, which advised the claimant of his right to appeal. From the contents of this letter the claimant understood he was not going to be afforded the right to appeal or the grievance procedure. The claimant's solicitors replied on the 27 March 2008 reiterating that they believed that he had a stateable grievance and his appeal should be heard.

The respondent wrote to the claimant on the 1 April 2008 informing him that he was to attend an investigation meeting on the 11 April 2008. This meeting was to investigate the concerns they had raised with the claimant in November 2007. They were five specific issues raised during the period of the 18 October to 6 November 2007. This letter enclosed the disciplinary procedures and informed the claimant of his right to be accompanied by a colleague, shop steward or a trade union official. The claimant's solicitor responded to this letter on his behalf seeking a postponement as he was still under medical care. They also sought on his behalf any copies of documentation and any written evidence in relation to the issues under investigation. The respondent granted the postponement and the investigation meeting was rescheduled for the 13th May 2008. The claimant received copies of timesheets and receipts but no witness statements. The claimant wanted to be accompanied by his legal representative but the respondent declined this request.

The investigation meeting took place on the 19th May 2008, minutes of which were put into evidence. It was chaired by a field line manager to whom the claimant did not report. ND or GG did not attend this meeting. The chair of the meeting explained he had spoken to two individuals regarding the allegations and he now needed to get the claimant's version of events. The claimant never received witness statements of these two individuals, the only evidence produced were the timesheets and receipts. The first allegation was in respect of a parking receipt submitted by the claimant. This parking receipt did not reflect the time in which he was in this location. At the meeting the claimant explained that he had forgotten to press the

button for a receipt when paying for his parking and had picked up a discarded parking receipt. On a timesheet the claimant had listed he was in a location from 14.30 to 15.30 however he had lodged a toll receipt for the same day timed at 15.00. Another toll receipt for 16.15 was also submitted but the claimant had recorded his location elsewhere at this time. The claimant could not give any explanation in relation to these toll receipts. When the claimant was asked to explain how he compiled his hours up at the end of the week, he replied he always put in 39 hours, it could be 38 or 40, he never booked overtime. It was explained to him that he was claiming payment on the total hours. The claimant said his timesheets must reflect his dockets submitted. The chairman pointed out to the claimant that he had received memos on the 18 April and 15 June 2007 instructing him on how to complete timesheets. The claimant had taken a holiday on the 23 of October 2007 but the respondent could not find any holiday request for same. The claimant would have telephoned one of the field service managers (ND). Another issue raised with the claimant was his travel time on the 24 October 2007 where he had claimed 1.5 hours but all three jobs were within walking distance. The claimant explained that more went in to travel time than getting from A to B. The chair of the meeting outlined that travel time taken to travel between two sites.

This investigatory meeting resulted in a short disciplinary meeting on the 17 June 2008. The claimant was accompanied by his shop steward. At the end of this meeting the claimant was informed he was being dismissed for gross misconduct and was told of his right to appeal to the head of operations within five days. A letter to this effect was issued to the claimant on the same day. The claimant appealed the decision and explained that he was still under medical attention and sending sick certificates in to the respondent.

The head of operations manager heard the appeal meeting on the 8 August 2008. The claimant was accompanied by his shop steward. The head of operations manager opened the appeal meeting by requesting the claimant to outline his grounds for appeal. The claimant advised him that he felt unfairly treated and an explanation had been given in respect of the parking ticket but not of the toll receipt at the disciplinary hearing. The claimant went on to explain that all of this had started in April 2007 over the coffee break issue, which had led to a breakdown of his relationship with the two field service managers. There had been five points alleged and only the toll receipt was outstanding. He did not appeal the final written warning in June 2007, as it was a difficult position to be in. At this meeting the claimant reiterated the deterioration of his relationship with the two field service managers. By submitting the parking ticket he was not trying to embezzle funds but to claim his entitlement. The head of operations wrote to the claimant on the 14 August 2008 upholding the original finding of the disciplinary hearing.

Under cross-examination the claimant confirmed that he received an e-mail from his manager on 18 April 2007 stating that time sheets must precisely match a full working day. He accepted that all engineers received this e-mail. This e-mail was issued following an extended coffee break taken by some engineers and sales employees at a coffee shop in a shopping centre. That coffee break had rolled on longer than normal as work related matters were discussed. He was not offended by the e-mail and no disciplinary action was taken by the respondent.

On 24 May 2007 he attended an investigative meeting as it was presented to him that irregularities existed in his time sheets. He was invited to bring a representative with him to that meeting if he so wished. He brought a shop steward with him. He accepted that he had completed and submitted time sheets that were difficult to read. He was angry and infuriated and that is why he completed time sheets in an illegible manner. He consistently felt stressed. Following the meeting of 24 May

2007 a further disciplinary meeting took place on 13 June 2007. Resulting from this meeting he received a final written warning. He was given the right to appeal this decision but did not do so as he felt the person who would hear the appeal was already part of the process. He did not feel strong enough to appeal the decision. He did not utilise the grievance procedures as he had enough interrogation. He accepted the warning.

On 8 November 2007 he was invited to attend an investigation meeting concerning inconsistencies in his time sheets and activity report sheets with his expense receipts. He did not attend this meeting and was certified as unfit for work from 12 November 2007 due to stress related illness. He remained unfit for work for a number of months and submitted medical certificates up to 30 June 2008 and in meantime instructed his legal representative to appeal the finding of the investigatory and disciplinary meetings. The 5-day time frame given to him previously to appeal those findings had been too short. Ultimately he did attend the investigatory meeting on 19 May 2008 which resulted in a disciplinary meeting held on 17 June 2008. He attended both meetings and was represented by a shop steward on both occasions. He accepted that he did not have any explanations for the allegations made against him, concerning toll receipts being inconsistent with his time sheets. He was dismissed following the disciplinary meeting and appealed that decision. His appeal was heard on 8 August 2008 and the decision to dismiss him was upheld. He has not sought alternative employment since his dismissal, as he does not feel he could work for another employer after the way he was treated by the respondent. He is currently driving a taxi and earns an average weekly wage of €360.00.

Respondent's Case

The first witness for the respondent gave direct sworn evidence that he is a service field line manager for the respondent company. The claimant reported to him. He held a meeting with the claimant on 18 April 2007 regarding discrepancies on time sheets and dockets. Following this meeting he reminded the claimant of procedures to be followed when completing engineer service dockets. He issued a letter to this effect and informed him that no further action would be taken and the matter was closed. No disciplinary action was taken by the respondent. Similar letters were sent to all service engineers and an e-mail was issued by the respondent to all engineers stating that time sheets must precisely match their full working day.

Under cross examination he confirmed that he attended the investigatory and disciplinary meetings held on 24 My 2007 and 13 June 2007. He confirmed that the extent of the evidence put before the claimant at those meetings related to time sheet documentation. He confirmed that, prior to being the claimant's supervisor he was his work colleague.

The next witness gave direct sworn evidence that he is a senior field line manager for the respondent company. A total of 16 engineers report to him but the claimant did not report to him. All engineers must complete dockets and time sheets. The dockets contain information on arrival time, travel time and departure time. These times must be recorded and the time sheets must reflect these times. Customers are billed based on the recorded times and great reliance is placed on the dockets and time sheets. He gave further evidence that discrepancies were discovered on the claimant's time sheets and dockets. These discrepancies were put to the claimant at the investigatory and disciplinary hearings and no explanation was provided for the discrepancies.

Under cross examination he confirmed that he ran the disciplinary hearing. He confirmed that, prior to the investigatory and disciplinary meetings he had spoken to two customers of the respondent, concerning times that the claimant had visited their premises. He did not get written statements

from these customers and they were not present at the meetings. He was part of the investigative process and also part of the investigation on the ground. He does not accept that he was in any way biased in reaching the decision to issue a final written warning.

The next witness gave direct sworn evidence that he is a field line manager. The claimant did not report to him. He was asked by the respondent company to hear the investigation into inconsistencies in the claimant's time sheets and activity report sheets with his expense receipts. He took on this role and conducted it in an impartial manner. He considered evidence provided to him by the previous two witnesses but they were not part the investigation team. He wanted to ascertain if the allegations against the claimant were correct or false. He chaired the investigatory and disciplinary hearings held on 19 May 2008 and 17 June 2008. He sought explanations from the claimant regarding why time sheets differed from expense sheets but no explanation was provided. The claimant had also submitted another person's car park receipt as an expense claim and this was unacceptable. There was no response made to some questions he put to the claimant. The evidence he had before him constituted fraud and consequently he made the decision to dismiss the claimant on the grounds of gross misconduct. The claimant was already on a final written warning. He offered the claimant an opportunity to appeal his decision within 5 days and he had no further involvement in the process.

Under cross examination he confirmed that he had received an overview of the position from the previous two witnesses and he formed the view that it was not necessary for them to attend the investigation meeting which he chaired on 19 May 2008. He was of the opinion that the claimant was to attend the investigatory and disciplinary hearings.

The next witness gave direct sworn evidence that she is a Human Resources manager for the respondent company. She attended the investigatory and disciplinary meetings held on 19 May 2008 and 17 June 2008. Her role at both meetings was to take minutes and to ensure that fair procedures were followed. It was her view that confidence and trust had broken down. The claimant was a repeat offender. She advised the chairman but she did not take the decision to dismiss the claimant. The chairman took the ultimate decision.

Under cross examination she accepted that the claimant was refused legal representation at the investigation meeting. In that regard she was applying company policy which allowed for the claimant to be represented by a fellow employee or trade union official. She was satisfied that the claimant was afforded fair procedures. She did not attend the appeal hearing as she was present at the investigative and disciplinary hearings.

The next witness gave evidence that he was head of operations for the respondent company. He had no direct relationship with the claimant. He only became directly involved when he heard the appeal. He heard the appeal on 8 August 2008 and stated that he wanted the meeting to be open and honest. The claimant did not produce any new evidence and nothing of substance emanated from the hearing. The claimant had been on a final written warning and the essential breakdown in trust meant there was no reason for him not to uphold the original decision to dismiss him.

Determination

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal notes that the respondent is engaged in the security business and in that regard trust between the claimant and the

respondent and between the latter and its clients was of paramount importance. The element of trust between the claimant and the respondent had broken down. The Tribunal is satisfied that the respondent followed fair procedures and the claimant was represented at all investigatory and disciplinary hearings by a shop steward. The Tribunal has considered submissions by counsel for the claimant and is satisfied that legal representation was not a legal entitlement in this case.

The Tribunal is satisfied that the claimant was not unfairly dismissed and accordingly determines that the claim under the Unfair Dismissal Acts 1977 to 2007 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

