

## **EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM OF:**

**CASE NO.**

EMPLOYEE - claimant

UD54/09

**Against**

EMPLOYER - respondent

**under**

### **UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr. J. Reid  
Ms. N. Greene

heard this claim at Dublin on 10th June 2009 and 7th October 2009.

#### **Representation:**

Claimant: Mr. Conor Kearney BL instructed by Keith Walsh, Solicitors, 8 St Agnes Road, Crumlin Village, Dublin 12

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

The determination of the Tribunal was as follows:-

#### **Respondent's Case**

The HR Manager gave evidence. She was working for the respondent for over three years. Employees operate a clock in and clock out system when arriving and departing the workplace known as a Time Management System (TMS). She manages this system. The TMS calculates hours worked for each employee and the payroll is done based on those hours. It is very important that the TMS is followed correctly and all managers have an unambiguous understanding of how the system operates.

The witness observed a number of employees departing the workplace at times that did not tally with their times on the TMS. She conducted a number of audit trail reports and discovered that their clocking times were altered. She discovered that their actual clock out times had been deleted and new clock out times were added. The audit trail reports indicated that employees were leaving

work earlier than their clock card showed. The claimant had access to these times on the TMS and the responsibility rests with him to ensure that hours are recorded accurately. The claimant as a department manager had the facility to alter employees clocking times.

The claimant was requested to attend an investigatory meeting with the witness on the 24 October 2008. He was advised of his right to be represented at the meeting and he was accompanied by a work colleague. At that meeting the claimant was given a copy of the audit trail reports and he was asked why clocking times had been altered and new times inserted. He replied that he did not know or could not remember. He said that he wanted to resign as he felt he was being set up and he felt he was going to be sacked. The witness tried to dissuade the claimant from resigning as the only purpose of the meeting was to establish the facts. The claimant then withdrew his resignation and when the meeting concluded he was suspended on full pay, and a date for a disciplinary meeting was scheduled. The scheduled meeting did not go ahead as the claimant said he was too busy to attend the meeting. The witness rescheduled the meeting for the following day but the claimant did not attend. The meeting proceeded without him on the 7 November 2008 and no explanation was provided as to why the TMS had been altered. The claimant was dismissed by letter of the 10 November 2008 and was given 5 working days to appeal the decision but he did not do so. The claimant was altering his colleagues clockings. He did not have the facility to alter his own clockings, as this facility was restricted to the witness and another manager.

The witness said that prior to the claimant's dismissal the claimant had taken a case of bullying and harassment against his manager. There was no definitive resolution to his complaint but there were some key learnings and recommendations. As far as the witness was concerned the complaints were fully investigated and resolved and the claimant shook her hand at the end of the process stating that a weight had been lifted from his shoulders.

Under cross-examination the witness confirmed that the same people conducted the investigatory and disciplinary meetings. She agreed that the claimant's manager, against whom allegations of bullying and harassment had been made by the claimant, was part of the investigation team into the alteration of the clockings by the claimant. She confirmed that he attended the investigatory meeting but his only role was that of a witness and to take notes. She denied that she questioned the claimant in an aggressive or abrupt manner at the investigatory meeting and denied that the claimant got upset at that meeting. She confirmed she informed the claimant that she would accept his resignation if he signed a legal waiver. The claimant was given 24 hours notice of the disciplinary meeting but she had attempted to contact him on several occasions prior to the meeting. The outcome of the company's investigation was that the claimant had falsified the TMS records. There was no issue between her and the claimant and the bullying and harassment claim was fully concluded and both sides had shook hands and moved on.

The witness told the Tribunal that the audit trail investigation commenced around the 20 October 2008 and lasted about 4 days. She did not see that the attendance of the claimant's manager at the investigation meeting as being a problem, as she had decided that their working relationship difficulties had been resolved. She now understands that the perception may be otherwise. She confirmed that the claimant's solicitor contacted her on the 6 November 2008 and her investigation had concluded at that stage. Prior to that date the claimant was not represented by a solicitor.

The claimant's manager (D) gave evidence. He explained the disciplinary procedures: verbal warning, first written warning, final written warning and then dismissal. Dismissal depends on the gravity of the conduct. The responsibility for dismissal rests with the HR Department.

Following complaints of bullying and harassment made against him by the claimant and investigated, D followed the recommendations outlined in the report.

The HR Manager informed D in advance of a scheduled investigatory meeting into the alleged falsification of the TMS by the claimant. The meeting took place on 24<sup>th</sup> October 2008 and D was asked to take notes. The HR Manager, the claimant and the claimant's witness S also attended the meeting. The claimant denied he had deleted employees' clockings during the meeting but towards the end of the meeting he admitted deleting one employee's clockings. During the course of the meeting the claimant indicated that he wanted to resign. The claimant was asked to re-think about resigning. As the claimant had not formally tendered his resignation, he was asked to attend a disciplinary meeting on 6<sup>th</sup> November 2008. Subsequently, the claimant said he was unable to attend that meeting and the HR Manager re-scheduled it for 12 noon the following day. As the claimant did not attend that meeting the meeting proceeded without him. The decision to dismiss the claimant was taken by the HR Department and the HR Manager informed D of the decision. The claimant did not appeal his dismissal. The respondent had already dismissed another employee for similar reasons.

D contended that he had told the claimant that problems existed with his performance and that he should try and improve. He told the claimant that he needed to work on his weak areas. He never told the claimant to think about getting a new job.

### **Claimant's Case:**

A Team Leader (S) gave evidence. He commenced work with the respondent at the same time as the claimant. He reported to the claimant. The claimant trained him in on the TMS and he looked after this in the claimant's absence. The claimant was a stickler for time keeping. S explained that if employees started their shift early and left early the TMS had to be adjusted accordingly so as not to record overtime for the individual.

S attended two investigatory meetings with the claimant, the first meeting was on 23<sup>rd</sup> October 2008 and the second the next day, 24<sup>th</sup> October 2008. A list of inappropriate clockings was presented to the claimant. S was also furnished with the list. The HR Manager went through them one by one and asked the claimant for explanations. The alteration of the clockings was of no benefit to the claimant. S felt the HR Manager rushed through the list and did not afford the claimant enough time to explain them. At the end of the meeting on 24<sup>th</sup> October 2008 the claimant offered his resignation. S never believed that the claimant would be dismissed. The claimant had confided in him of his treatment by D and that management did not appear to want him in the company.

S told the Tribunal that he used the claimant's username and password to access the TMS.

A warehouse operator gave evidence. He reported to the claimant. The claimant was very strict on time keeping. If at any time he arrived late for work he was expected to work up those minutes for which he was late. During the summer of 2007 he sought force majeure leave for family reasons and spoke to the claimant. The HR Manager refused his request. When he returned to work the HR Manager ignored him for one year. He was dismissed at the same time as the claimant.

The claimant gave evidence. He commenced employment in July 2003 as a Warehouse Manager. His duties included the day to day running of the warehouse. Seven staff reported to him. He did not receive any training for the TMS. He was given access to adjusting/deleting clockings of his

staff only.

The claimant explained that if an employee was on an 8 – 4.30 shift and came in as early as 7 and commenced working and then left at 3.30 the TMS would record the early start as overtime. He had to delete the clockings to reflect the correct shift hours. He had deleted clockings hundreds of times for his staff. He did not have access to adjust his own clockings.

When a new warehouse operator was recruited and offered employment without attending a medical examination the claimant challenged the HR Manager about this. She was most unhappy about being challenged. When he sought clarification from the HR Department on force majeure leave for a warehouse operator he was advised to adjust the employee's clock accordingly. The HR Manager was most annoyed about this and she ignored him after that.

D had informed him that the HR Manager had no time for him and that senior management did not like him. He asked D several times to set up a meeting with the HR Manager. D contended that the HR Manager did not want to meet with him, he was not liked in the company and that he should look for a new job.

The claimant had always received good appraisals in the company. Since December 2007 he had been harassed and intimidated by D at both his appraisal and monthly meetings. He sent a formal letter of complaint to the HR Manager. The complaint was fully investigated. The stress he suffered had affected his life outside work.

On 23<sup>rd</sup> October 2008 he was suspended on full pay pending an investigation into allegations of falsification of records in the TMS. He was informed that these could potentially be classified as gross misconduct as they represented a breach of trust. He was asked to attend a formal investigatory meeting the following day. He felt he would not be afforded a fair hearing, as both D and the HR Manager did not like him. He duly attended the meeting and S attended as his witness. He was questioned on his understanding of the TMS. A record of employees' clockings was presented to him and the manual adjustments of certain employees' clockings. He recalled only deleting one of these clockings. He felt that he was put on the spot and deemed to be guilty before the meeting commenced.

During the course of the meeting on 24<sup>th</sup> October 2008 the claimant offered his resignation. He telephoned the HR Manager the following week regarding his resignation. He was asked to sign a compromise agreement pertaining to his resignation and was told that no further action would be taken against him. He contended the respondent wanted the easy way out. He did not sign this agreement.

He did not receive the respondent's letter dated 5<sup>th</sup> November 2008 until 4.45 that evening. In that letter he was invited to attend a disciplinary meeting at 10.00 a.m. the following day. He informed the HR Manager that he could not attend that meeting. He did not wish to attend a disciplinary meeting until he sought legal advice. His solicitor subsequently communicated with the respondent in the matter.

By letter dated 10<sup>th</sup> November 2008 the respondent informed the claimant of his summary dismissal from the company and he was paid up to and including Friday, 7<sup>th</sup> November 2008. He was offered a right of appeal. He chose not to appeal the decision.

The claimant established loss for the Tribunal.

**Determination:**

The Tribunal carefully considered the evidence adduced at this two-day hearing. There were a number of deficiencies in the company's procedures. The claimant had taken a case of bullying and harassment against his manager and the claimant's manager was part of the investigation team into the alteration of the clockings by the claimant. It was maintained that the manager's role at the investigatory meeting was as a witness and note taker. The Tribunal is of the view that this individual should have had no role in the disciplinary process.

The claimant was asked to attend a disciplinary meeting by letter dated 5<sup>th</sup> November 2008. He informed the HR Manager that he could not attend as he wished to seek legal advice. The claimant's solicitor contacted the company on 6<sup>th</sup> November 2008 and asked that the scheduled disciplinary meeting not take place until he took full instruction from the claimant. The disciplinary meeting proceeded in the absence of the claimant.

The Tribunal is of the view that the claimant should have been afforded the opportunity to discuss matters fully with his solicitor but the company was too precipitous in its handling of the matter.

While procedures as outlined above were deficient the claimant admitted he tampered with clockings and therefore contributed to his own dismissal. He also failed to take an appeal against the company in circumstances when he would have had time to consult with his legal representative.

The Tribunal finds that the claimant was unfairly dismissed. However, it is clear from the evidence that the claimant did by his own actions contribute partly to his own dismissal. The Tribunal awards the claimant €3,860 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)