

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD536/2009,
MN550/2009

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly B L

Members: Mr. R. Prole
Ms K. Garvey

heard this claim at Wicklow on 12th November 2009 and 19th January 2010

Representation:

Claimant : Mr. Richard Joyce, W R Joyce & Co, Solicitors,
18 Main Street, Arklow, Co Wicklow

Respondent: Mr Daniel Keleher B L instructed by
Maguire McNiece & Company, Solicitors, 2 Church Road, Greystones,
Co. Wicklow

The determination of the Tribunal was as follows:

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn at the outset of this hearing.

Respondent's Case

The respondent is engaged with the production and supply of fresh herbs to the national retail market. Due to the nature of the work involved hygiene and quality of production are major factors in producing acceptable end productions. Up to thirty staff including managers, factory operatives and administrative personnel were employed by the respondent. A document called a position agreement was furnished to incoming employees together with a company handbook that included, among

In July 2007 the respondent in the person of its managing director issued a written warning to the claimant concerning his toilet behaviour. That warning remained valid for twelve months. Following complaints from another employee in late June 2008 against the claimant the respondent in the form of its accountant conducted an investigation. A draft report on that investigation was sent to the claimant for his comments. A final report including the claimant comments issued on 10 July. This investigator's lengthy report recommended that disciplinary proceedings should be invoked against the claimant.

The managing director said that the purpose of the disciplinary hearing was to give the claimant both the space and time to explain his actions and behaviour in relation to the finding that he intimidated a particular work colleague on 27th June 2008. The claimant declined the offer of representation at the subsequent disciplinary held on 23 July 2008. He eventually conceded that some of his remarks and general demeanour towards that colleague were inappropriate and insulting. The managing director handed a letter to the claimant on 29 August formally advising him that he was being issued with a written warning due to his behaviour. That letter also told him that should there be a repeat of inappropriate performance then he might be subjected to further disciplinary action. The claimant was given the right to appeal the decision of the letter writer.

While furnishing the claimant that letter he got aggressive and aired a number of grievances. Those grievances were responded to a few days later. On 30 August the claimant was involved in an incident that resulted in the disruption of a packing line. Three days later the toilet, which the claimant was the last to use, had been left "in a terrible state". The operations manager wrote to the claimant on 4 September placing him on suspension pending the completion of an investigation into those incidents. An investigation meeting took place between these two men on 12 September. This investigator also suggested that disciplinary action be taken against the claimant.

The claimant accompanied by his wife attended a disciplinary hearing on 15 October with an accountant contracted to the respondent and a witness. One day later that accountant wrote to the claimant informing him that his behaviour constituted an unacceptable risk to the company to the extent that his employment was to be terminated. The claimant was reminded of his right to appeal that decision.

Under cross-examination the managing director agreed that some time had elapsed between the incident of 27th June and the disciplinary hearing of 23rd July 2008 in relation to that incident. The reason for the delay was that due to the differing accounts from the claimant, and the other employee involved in the incident, witness statements were required from staff.

On 6th August 2008, the claimant made a public apology on the factory floor to the other employee involved in the incident that occurred on 27th June. The claimant was on annual leave from 9th –27th August and on return from this leave he was issued with a written warning, which was to be held on his file for at least twelve months subject to satisfactory conduct and performance. The claimant was formally issued with this letter on 29th August 2008. The claimant reacted badly to this, he was angry and threatening towards the managing director. At this point the meeting was adjourned and a colleague from company accounts was asked to come to the office to

witness what the claimant was saying and his behaviour. The managing director accepted that the claimant was entitled to be surprised on receipt of this warning as he may have felt that the public apology was the end of the issue. However, the nature of the incident was so serious that the company felt it was necessary to issue a written warning.

On 30th August 2008, the managing director was called to an incident on the factory floor involving the claimant. The managing director said the conveyor belt was jamming up at the end of the packing line and that this would not be a common occurrence. He spoke to the supervisor on duty at the time who made it clear to him that it was the claimant's fault. He then spoke to the claimant and told him to repack the basil. The claimant said that he would. The managing director phoned later that day to check that the claimant had dealt with the issue. There was CCTV footage of the factory floor showing the lead up to and the jamming of the conveyor belt. The managing director said the claimant had been shown a copy of this footage.

On 4th September 2008 the claimant was suspended from work on full pay pending an investigation by the company into the two incidents above, which took place on 29th August 2008 and 30th August 2008, and an incident on 2nd September when a toilet was left in an unhygienic condition.

The operations manager was asked to undertake the investigation and he wrote to the claimant on 4th September 2008. He gathered statements from the people involved in the incidents. He met with the claimant on 12th September 2008. At this meeting he went through the statements with the claimant and gave him the opportunity to reply to these statements. The claimant did not agree that on 29th August his tone was aggressive and threatening. The operations manager took note of the claimant's answers to the gathered statements.

On 15th October 2008 the claimant attended a disciplinary meeting with the company where the claimant was again given the opportunity to respond to witness statements. On 16th October 2008 the claimant was informed that as a result of the outcomes of disciplinary procedures and investigations invoked by the company his employment with the company was being terminated.

The claimant appealed the decision to dismiss him and an appeal hearing was scheduled for 20th November 2008. On 26th November 2008 the claimant was informed that the appeal found that the company acted fairly and followed procedures.

Claimant's Case

The claimant told the Tribunal that he commenced working with the respondent company in 2002. He felt his relationship with the company was good for all six and a half years.

The claimant was speaking to a colleague about the company no longer wanting employees to work a six day week. Himself and the colleague were discussing the issue of time that would be lost. Another colleague, COC, told him to shut up, that nobody likes him, and he is the worst packer here. The matter was investigated by

LMcH, who showed the claimant the video of the argument with the colleague on the factory floor. After that the claimant was working as normal and was sent a report from LMcH, which said that disciplinary action should be invoked.

The claimant publicly apologised to the colleague and felt humiliated doing same. The claimant felt that based on how TOH was talking that the public apology which he made on 6th August 2008 was the end of the matter.

On returning from holidays the claimant was called to the office and told that he was receiving a written warning for the incident which occurred with COC. The claimant felt upset and a bit angry. He was crying. The meeting lasted about 5 minutes. TOH called in L because the claimant was crying. The claimant does not accept the company's version of events surrounding this meeting at the end of August.

On Saturday 29th August the claimant attended work at 8:30am. He was asked to start packing the basil into the crates. The claimant stacked two or three packs beside him and then placed them on to the conveyor belt. The claimant did not notice that the machine was jamming. The claimant told TOH that the machine jammed because he was the only person packing on the day and he also told TOH that he would repack the basil on his break. The claimant was asked to repack the basil due to its poor quality.

The claimant told the tribunal he was called to another meeting with TOH. He was not told the reason for the meeting beforehand. At the meeting TOH told the claimant that on the basis of the written warning and what occurred with the conveyor belt on Saturday, he was being suspended from his duties.

The claimant received a letter on 4th September informing him that he was being suspended on pay pending an investigatory meeting which was scheduled to take place on 12th September 2008. This letter told the claimant that he would receive all video footage and statements prior to the meeting. The claimant told the Tribunal that he did not receive the video footage. The claimant received a lot of documentation and did not understand what was going on. At the meeting the claimant did not ask to see the video footage referred to because he felt the company were aware of their own procedures.

The claimant attended a disciplinary hearing on 15th October 2008 which was scheduled to deal with three incidents, including the deliberate causing of the packing line to become jammed. One of the incidents was not proceeded with and noted as "not proven". The claimant brought, DB, his wife to the meeting as his nominated witness. At this meeting the claimant told WH that if he checked the video it would show the quality of the basil. The claimant said he had not seen the video but surely it would show that the basil was being checked.

On 16th October 2008 the claimant was informed that he was being dismissed from the comp

During cross examination the claimant confirmed that on 29th August 2008 the conveyor belt jammed approximately two or three times. The claimant also confirmed that he requested that the witnesses who had compiled statements about

him be in attendance at the appeal hearing, which took place on 20th November, so that he may cross examine them. These witnesses did not attend. The claimant proceeded with the appeal hearing nonetheless.

Determination

The Tribunal, having considered all of the oral evidence, the documentation handed in during the course of the two day hearing together with the legal submissions, are satisfied that the respondent company had a very comprehensive disciplinary procedure and followed that procedure correctly and fairly. The only matter the Tribunal criticises the respondent company for was their timing when serving the claimant with his warning notice, which occurred after the Claimant had already apologised in public to COC.

There was a conflict of evidence in relation to whether or not the claimant had been furnished with a copy of the cctv footage of the incident on the 30th August, 2008. The claimant attended a disciplinary hearing on the 15th October, 2008 and the undisputed notes of that disciplinary meeting reported his comment on the video which was “Video shows quality check with basil”. The Tribunal are satisfied on the balance of probabilities that the claimant was furnished with a copy of the cctv videofootage.

The Tribunal are satisfied that the respondent company gave the claimant the opportunity to comment on each and every allegation that was made against him and gave him every opportunity to put his side of the story to them. The Tribunal are also satisfied that the respondent company acted in accordance with the company’s grievance procedure and the claimant was not denied his right to bring a witness or representative with him to the disciplinary hearings. Having considered the case in its entirety the Tribunal find that the respondent’s decision to terminate the claimant’s employment was a fair and reasonable one in all the circumstances and therefore the claimant’s claim under the Unfair Dismissals Acts, 1977 to 2007, in law must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____