

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE
RP476/2009
against

CASE NO.
UD461/2009

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey BL
Members: Mr R. Murphy
Ms. E. Brezina

heard this claim at Dublin on 23rd October 2009
and 5th January 2010
and 6th January 2010

Representation:

Claimant: In person

Respondent: Mr. Tom Mallon BL instructed by Mr. Barry Reynolds
Solicitor Arthur Cox, Solicitors, Earlsfort Centre, Earlsfort
Terrace, Dublin 2

Determination:

The company adduced evidence as to the timekeeping of the claimant. From that evidence it is clear to the Tribunal that the claimant's timekeeping was very unsatisfactory.

Evidence was given that on numerous occasions he failed to attend a college course sponsored by the company and he failed to provide any or any adequate reasons for his absences therefrom.

His general attendance at work was unsatisfactory. Details from the company regarding his general attendance at work indicated 22% absenteeism by the claimant over a five-month period. A comprehensive table of these absences was opened to the Tribunal.

The first incident leading to the claimant's suspension related to an altercation in the canteen over a missing wallet. Evidence was adduced that it required four people to restrain the claimant on this occasion. An e-mail from a member of staff who was unconnected to the incident indicated what

had occurred. The claimant maintained that this was a falsehood and had not occurred in the manner alleged. The Tribunal does not accept the claimant's evidence in this regard.

Throughout the evidence the claimant alleged that the company was conspiring against him in order to dismiss him. As evidence of this he also introduced e-mails to the Tribunal, which he claimed to contain "coded messages". An examination of one of these "coded messages", which was printed at the bottom of a number of e-mails, indicated that these were in fact adages or innocent greetings in the nature of a "thought for the day". Another one was an IT file tracking code. When this was pointed out to the claimant by the Tribunal the claimant seemed to accept that this was the case.

The Tribunal also heard evidence of a persistent pattern of abusive behaviour, firstly, towards two employees, and another towards three managers. Those same three managers made a formal complaint of bullying and harassment, which was unprecedented in the company.

After the claimant's final suspension, he was requested to attend the company doctor. The company Doctor declared him fit to return to work. The company offered that he could return to his duties on his normal shift under a different manager; the company Doctor having recommended that he not work night shift, for health reasons. It was also stated that after a six-month period, if his record and his behaviour improved he would be considered for transfer to the night shift as he had requested. However he refused to return to work and was dismissed in accordance with appropriate procedures.

If the company was deficient in any way it was in the nature of its tardiness in executing the ultimate sanction vis-à-vis the employee and it had ample grounds for applying that sanction earlier than it in fact did.

Furthermore, the claimant's assertion that he was discriminated against on the basis of Race was not well founded. All procedures were exhausted properly by the company before his dismissal.

The claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

The claim under the Redundancy Payments Acts, 1967 to 2005, does not arise.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)