

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE - *appellant*

CASE NO.  
UD1317/2009

against

EMPLOYER – *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. J. McGovern B L

Members: Mr. W. Power  
Mr. F. Keoghan

heard this appeal at Dublin on 22<sup>nd</sup> July 2010

Representation:

Claimant: Mr. Rezaul Hague and Mr. Reaz Uddin, 80 Marlborough Street, Dublin 1

Respondent: Ms. Claire Hellen of IBEC, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

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

The support operations manager gave evidence. She has been with the respondent for 5 years. The respondent repairs and services mobile phones. She works in the goods in/despatch and QA area. She is one of four managers. She had daily interaction with the claimant as he cleaned all areas including her section.

On the day of the incident, 11<sup>th</sup> May 2009, she was preparing for an ISO audit. She wanted the place to look great. The ISO audit takes account of how clean and tidy the building is. The claimant came into the room to empty the bins. She asked the claimant to clean the bottoms of the chairs and the area around the printer. The claimant refused saying he did not have to clean areas where people were working.

The support operations manager reiterated her request. She herself was helping with the cleaning

that day because one of the girls was off and the ISO audit was very important. It is an open company and all managers make requests to staff to carry out tasks. She did not make her request first to the claimant's manager. The claimant told her that he only had to do work assigned by his manager. The claimant became aggressive and raised his voice. He walked towards the support operations manager. He waved his finger and invaded her space. He called her names in English and in a foreign language. A member of the support operations manager's staff asked the claimant to stop and put his arm between the claimant and the support operations manager. This enabled the support operations manager to step back. The claimant left the area.

The support operations manager phoned the claimant's manager but his colleague answered the phone and at her request he came down to her work area. Meanwhile the claimant burst back into the room and damaged the magnetic door lock. The claimant left the room and then entered it for the third time.

She felt scared and went out for a coffee with a colleague. She sent an email about the incident to the HR manager and went home. She returned to work the following day.

The support operations manager met with the HR coordinator on 13th May 2009 to report what had happened on the 11<sup>th</sup>. She had no further part in the investigation or the disciplinary process.

The HR administrator gave evidence. When the claimant started work for the respondent he was given a job description. She did not have a copy of the job description signed by the claimant but she did have the Induction Checklist signed by the claimant that acknowledged receipt of his job description.

The HR administrator issued the letter on 11<sup>th</sup> May 2009 suspending the claimant with pay, because the HR manager was going on holidays. The claimant was asked to attend a meeting on 14<sup>th</sup> May and advised to bring a representative. She also spoke to the support operations manager's colleagues who were present during the incident.

The HR coordinator gave evidence. She, together with a colleague the claimant's own manager was not available, met the claimant and his representative on 14<sup>th</sup> May. She took the minutes of the meeting. At the meeting, the claimant said that the row with the support operations manager happened because she made a racist remark to him. He said he only had difficulties with the support operations manager.

The allegation of a racist remark was investigated. The HR coordinator met separately with the support operations manager and the three people who worked in her area. She found nothing to substantiate the claimant's allegation. The support operations manager was not suspended because there was no evidence of wrongdoing. The HR coordinator was happy that the allegation of a racist remark was properly investigated.

The HR manager gave evidence. She was aware of the incident the day it occurred. The claimant's manager phoned her to say the support operations manager was upset and had gone home. Copies of the statements taken to investigate the incident on 11<sup>th</sup> May were given to the claimant.

On the day of the incident the claimant was walked out of the building and then said he was leaving. He was suspended so that the incident could be investigated and also because they were not comfortable having him around after the incident.

There had been a previous incident when the claimant had been aggressive towards his manager. He had been given a verbal warning at the time.

She wrote to the claimant on 21<sup>st</sup> May asking him to attend a disciplinary meeting. At the meeting the HR manager told the claimant that they had decided to dismiss him for insubordination, threatened violence and failure to carry out a reasonable instruction. In her view there was no other option because the respondent has a duty to protect managers from threats of violence.

The claimant appealed the decision to dismiss to the managing director. At the appeal meeting the claimant's representative asked if the security cameras had recorded the incident. They had not. The previous incident was taken into account even though there had been no formal caution given.

The managing director gave evidence. At the appeal meeting, two issues were raised by the claimant in his defence. The first was the issue of video cameras. There were no cameras in that area and no recording of the incident. There were inconsistencies between the statements of the support operations manager and the claimant. At the time the managing director reviewed all the documents and he confirmed the decision to dismiss.

### **Claimant's Case**

The claimant gave evidence. On the day of the incident, at about 10.30am he was in the support operations manager's office. She asked him to clean the desk. He told her that his manager had instructed him not to disturb people while they are working, to clean only when people are not around. The support operations manager got angry and told him that she was a manager and he should do what she told him. He then said that if she had a problem she should talk to his manager. The support operations manager became angrier. She verbally abused him and made a racist remark. There was nobody around to witness this exchange.

The support operations manager phoned the claimant's manager's colleague. When he came he told the claimant to go home. Later the HR manager phoned the claimant to confirm his address. She did not ask him anything about the incident. The next day he received the letter of suspension. There were 5 witnesses named but none of them gave his side of the story.

The claimant had no reason to shout at the support operations manager. He needed his job desperately. The claimant had heard the evidence of the support operations manager and the other witnesses for the respondent. It was not true that he had threatened the support operations manager. He had not been angry. When the operations support manager asked him to clean the desk all he said in reply was talk to my manager. He did not burst in the door of the office.

The claimant accepted that he got angry when the support operations manager made a racist remark. It was not a big incident. She got angry and he left.

He understood enough of the letter asking him to attend the meeting on 14<sup>th</sup> May. At the meeting he just replied to the questions put to him. He went to the meeting on 22<sup>nd</sup> May but he was not asked anything, he was just told he was dismissed. He appealed the decision but the managing director just confirmed the decision. The claimant felt that he did not get justice. The incident involved two people but only he was suspended. Also the people who made statements about the incident had the support operations manager as their manager and were less inclined to see the incident from his point of view.

The claimant was surprised when the disciplinary process resulted in his dismissal.

**Determination**

The Tribunal carefully considered the evidence adduced in this case. The Tribunal is satisfied that an incident occurred on 11<sup>th</sup> May 2009. The evidence given by the parties was vastly conflicting. The Tribunal notes that evidence of the incident was given by only one witness, on behalf of the respondent, in relation to the incident, when it seems that two other relevant witnesses could have attended the hearing.

The Tribunal prefers the evidence of the respondent. The Tribunal believes that the claimant was sent home on 11<sup>th</sup> May on the instructions of his manager’s colleague rather than leaving of his own volition. However he was notified of the complaint against him and of the decision to suspend him by letter received on 12<sup>th</sup> May.

The respondent’s procedures were predominantly adhered to. The Tribunal finds that it was reasonable of the respondent to find that the incident amounted to gross misconduct on the claimant’s part and the dismissal under the circumstances was not unfair. The claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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