

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE - *claimant*

CASE NO.
UD847/2009
MN886/2009

against

EMPLOYER –*respondent*

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: Mr. T. Taaffe
Members: Mr. M. Flood
Mr. S. O'Donnell

heard this claim at Dublin on 8th March 2010 and 4th June 2010

Representation:

Claimant: Mr. Brian Conroy BL instructed by Ms. Joanne McInerney of
Able Solicitors, 72 Tyrconnell Road, Inchicore, Dublin 8

Respondent: Ms. Deirdre Gavin, IBEC, Confederation House,
84/86 Lower Baggot Street, Dublin 2 (*on 8th March 2010*)
Ms. Eugenie Houston B.L. instructed by Mr. James Evans
James P. Evans , Solicitors, 13C Main Street, Ongar Village,
Dublin 15 (*on 4th June 2010*)

The determination of the Tribunal was as follows:

Respondent's Case:

The general contract manager for the respondent gave evidence. She wrote to the claimant on 15 September 2008 inviting him to a meeting to investigate allegations that he had falsified his time sheets. The meeting was rescheduled at the claimant's request for 10 October 2010. The claimant came to the meeting without a representative. He showed the general contract manager his black eyes. He was angry and agitated. He said one of his colleagues was responsible. The general contract manager said she would investigate and get back to him. The falsification of time sheets was not discussed before the claimant left the meeting.

On 27 October 2008 the respondent company received a fax from a hospital. The claimant was injured in an accident at work. The insurance company was notified. An investigation was carried out. The Health & Safety manager of the respondent's client company was contacted. They contacted the night shift workers and employees of the client company. Nobody saw anything. The claimant's two colleagues said they did nothing to the claimant. The claimant did not report the matter to the Gardaí. The respondent took no further action.

The claimant was in hospital for 13 days. She did not contact him during this time. He phoned her and sent her text messages so often that she considered it harassment.

When the claimant contacted the respondent to return to work he was referred to the company doctor. The claimant was certified fit to return to work early in March 2009. On 16 March 2009 the general contract manager wrote to the claimant inviting him to a meeting to discuss the outstanding issues from October. She sent the letter by ordinary post and it was returned marked 'not known at this address'. She sent him a text message. He phoned her and she told him about the meeting. He said he would be there. The meeting was held on 20 March 2009. The general contract manager was accompanied by the operational manager. The claimant was unaccompanied.

The claimant was asked about having a representative. He said that he did not need anybody. At the meeting the claimant did not raise any defence of his actions. His accident at work was mentioned.

The general contract manager made the decision to dismiss the claimant. She based her decision on 3 issues. Falsifying sign in sheets is fraud and gross misconduct. The claimant as a supervisor should be reliable. She had lost trust in the claimant. She discussed her decision with the director.

The general contract manager sent a letter of dismissal to the claimant on 23 March 2009. The reason cited was that the claimant signed his time sheets claiming he was at work on 4, 5, 8, 12 September 2008. His colleagues reported that he was not at work on those dates.

The claimant received a written warning on 15 August 2008. The training manager had visited the claimant's workplace and found that the claimant had not shown up for work on 10 July 2008.

At the meeting on 10 March 2009 the claimant was shown copies of the statements made by his colleagues saying he was absent from work on the relevant dates. He did not get copies of the statements in advance. The claimant was not given the opportunity to question his colleagues' version of events. That is not provided for in the company handbook. Also the general contract manager did not tell the claimant she had lost trust in him.

The claimant was not on suspension when he had the accident at work. Yet the general contract manager did not consider allowing him to return to work while the investigation into the time sheets was carried out.

Hearing resumes on 4 June 2010

The Tribunal heard evidence from a witness (also known as W1) for the respondent who worked the same shifts as the claimant. He was at work on 4th December 2008; the claimant was not at work. The witness was at work on 5th the 8th and the 12th December and the claimant was not at work on those same dates.

The Tribunal heard evidence from a witness (also known as W2) for the respondent who

also worked as a cleaner. He was then made supervisor when the claimant ceased doing his job. The witness was asked about his understanding a respondent document stating that falsifying time sheets was gross misconduct. He replied that it was his understanding that if he falsified time sheets that he would be “let go”. He also explained that the supervisor was responsible for filling out time sheets. The witness was in work on the 4th and 5th December and the claimant was not present.

Claimant case:

The Tribunal heard evidence from the claimant. He commenced working as a cleaner, for the company that owned the business prior to the respondent company, in November 2005. In November 2007 he was promoted to supervisor. The current respondent company took over the business. When this happened he did not get on with the two previous witnesses; they alienated him. The claimant outlined in detail the difficulties that he had with the two previous witnesses.

The claimant told the Tribunal that he was at work on 4th September 2008 from 10.00 a.m. to 5.30 or 5.45 pm. He was in work on 5th September up to 5.30 or 5.45 pm. He could not recall the 8th. He never signed in to mark he was present if he was not present. He attended work for a full shift on 12th September.

On 29th September he was unwell but went to work. He signed in for 10.00 am to 6.00 am. He expected to last the full shift but did not. He normally signed out when he was leaving, it was an oversight and he did phone to explain about 1.00 am.

Some time later he was absent from work for a while due to illness and there was He sent the contract manager a text on 19th March 2009 and she sent him a text to say that they would meet in Dublin on 20th March. He thought that this meeting was about him returning to work. He did not know that this meeting was a disciplinary meeting. He was not prepared for a disciplinary meeting; he thought that the meeting was about a return to work.

He attended the meeting and the contract manager and another person (MR S) were in the room. The contract manager told him that he was absent from work on 4th, 5th 8th and the 12th of a certain month and if he had anything to say. He told her that he had been in work. She told him that she had statements to say that he was not. He told her that he was in work on the 12th but had gone home early, as he had been sick. She told him that he was paid from 10.00 pm to 6.00 am. He offered to repay her the money

It was put to the claimant that he admitted that he was not in work on 8th and he answered that he did not and that he signed in on the 8th and was in on the 8th.

He was not shown the two statements made about him. He was not offered a representative at the meeting.

Determination:

The Tribunal fully considered all of the evidence presented to it. It is not satisfied that the investigative and disciplinary process that the respondent invoked and implemented was fair and reasonable. In relation to the meeting of 20th March 2009 called by the respondent and attended by the claimant the Tribunal accepts that the claimant received notice of the meeting on the day before the meeting, that this was known to the respondent and that this notice was so short as to be both

unfair and unreasonable to the claimant and finds that this meeting also considered another matter that the claimant had not been given notice of. In addition the Tribunal is of the view that a fair and reasonable disciplinary process should have included an opportunity being given to the claimant to question the witness who had made adverse allegations against him.

The Tribunal finally finds that what the respondent refers to as a meeting to discuss the claimant's case "internally" was disciplinary in nature and that the claimant should therefore have been made aware of it and given the opportunity to attend it and address it if he so decided, and that this was a right which was denied him.

The procedural defects referred to were, the Tribunal holds, significant, so significant as to render the claimant's dismissal unfair. In this regard section 6(3) of the Unfair Dismissals Acts 1977 as amended by section 5(b) of the Unfair Dismissals (Amendment) Act 1993, was considered by the Tribunal. Accordingly the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds.

The Tribunal is also satisfied on the balance of probabilities from the evidence given that the claimant was guilty of misconduct and that as a result of his misconduct, he substantially contributed to his dismissal. It awards the claimant compensation in the sum of €1,000.00 under the Unfair Dismissals Acts 1977 to 2007.

Additionally, the Tribunal allows the uncontested claim in respect of minimum notice of two weeks wages totalling €1,029.00, under the Minimum notice and Terms of Employment Acts, 1973 to 2005, making a total award of €2,029.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)