

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO:

UD1064/2010

EMPLOYER *-claimant*

against the recommendation of the Rights Commissioner in the case of:

EMPLOYEE *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms K. T. O'Mahony

Members: Mr. P. Casey

Mr. J. Flavin

heard this appeal in Cork on 26th August 2010

Representation:

Employer: In Person

Employee: Mr. Noel Murphy, Independent Workers Union, Head Office, 55 North
Main Street, Cork

This case came before the Tribunal by way of an employer's appeal against the recommendation of a Rights Commissioner r-084003-ud-09 JOC.

Dismissal is in dispute in this case. The appellant is referred to as the employer and the respondent as the employee herein.

Employee's Case

The respondent manufactured bathroom pods. The employee commenced employment with the respondent in autumn 2007 cutting and driving a forklift for the employer. The employee injured his hand in the course of his employment on 11 November 2008. He ultimately reported the accident to his supervisor/manager (SOB), who said he would write a report on it later. Another employee helped the employee to write a report on the accident and he forwarded it to SOB and the safety officer. The employee continued to work for around 36 days after the accident. However, his injury became aggravated to the extent that on Friday 12 December he left work to see his doctor. He could not contact SOB to inform him so left a message for him. His doctor sent him for an X-ray. On his way for the X-ray he received a phone call from the company translator (AB) instructing him to return to work

immediately. The employee booked the X-ray for Sunday and then returned to work.

On his return to work he was instructed to attend a meeting. The production director, AB and the director (DG) were present at the meeting. At the meeting DG told the employee the accident was his fault and instructed him to re-write his statement. The employee re-wrote his statement repeating the original details and left to go home. On his way home he received a phone call from AB stating that the new statement was rubbish and to return to work in order to re-write it. He told her that he was finished, that it was Friday and he was going home. The employee had no recollection of an arrangement to meet DG on Sunday morning and disputed the respondent's assertion that he had said he received communication from a hospital security guard regarding an x-ray appointment. He had the X-ray in the Mercy hospital on Sunday and was then sent to Cork University Hospital.

The employee returned to work on Monday 15 December with a splint on his hand and was immediately called to a meeting. DG, the safety officer, AB and SOB were all present at the meeting. The employee was not asked if he wanted a witness or a representative present at the meeting. During the course of the meeting AB instructed the employee to 'shut up'. DG told him he was a liar, that the accident had been his fault and that he was trying to get money from him. The meeting was heated and DG banged on the table. The employee felt intimidated and nervous and was shaking. He left the meeting saying, "I'm not putting up with this I'm leaving." It was a horrible meeting and he was upset. He went to his doctor, who gave him a medical certificate and put him on medication. Later that morning he returned to his workplace and gave the medical certificate to the company accountant. While there he spoke with AB and told her that he had to take pills to calm him down. The employee subsequently submitted medical certificates to the company accountant covering his absence until 15 April 2009. When he asked the accountant about his job she assured him that everything was fine. On about four occasions, when submitting his certificates, he met and spoke with the production director and SOB. In cross-examination the employee denied the respondent's assertion that he had said he would not work there anymore.

On 20 March while absent on sick leave he received his P45 in the post showing a dismissal date of 15 December 2008. He had not received any prior notification of his dismissal. The P45 was his only notification of dismissal.

Employer's Case

DG had not been informed about the accident until SOB told him 35 days later, on 12 December, that the employee had left work to go to the doctor. DG instructed that the employee be asked to return to work to meet him. At the commencement of the meeting DG ascertained that the employee was not a member of a trade union but he did not offer the employee the option of having being accompanied at the meeting. They discussed the accident and DG was suspicious so he arranged to meet the employee on Sunday morning to take him for the x-ray. The employee did not appear on Sunday morning as arranged. On Monday 15 December DG instructed that the employee be directed to attend a meeting when he arrived at the workplace. The employee's excuse for not showing on Sunday morning was that he had received a call from a Polish security guard to go for his X-ray on Saturday night when it was quieter in the hospital. The employee could not give him the name of the security

guard. He then said that the phone call had been to his wife's mobile. DG became annoyed and said, "I want the truth." The employee stood up and said 'I'm out of here. I won't put up with this.' The employee returned two hours later with a medical certificate. DG's position was that the employee had been caught out in a lie and had walked out of his job. The employee was not dismissed. He had resigned. DG did not respond to a letter from the trade union because he does not recognise that particular trade union. In cross-examination DG accepted that he did not seek a letter of resignation from the employee or write to him telling him that he had accepted his resignation.

AB, who was present at both meetings with the employee, confirmed DG's evidence as to what transpired at those meetings. AB could not recall whether she had translated the word 'liar' for the claimant at the meeting of 15 December. The employee left that meeting stating, "I'm not putting up with this and I am leaving here and now." A few hours later she met the employee in the hallway and remarked that it was good that he was back because they needed to finish the conversation. In response the employee told her that he gets "a heart attack" the moment he sees her and said for the second time "I'm out of here." The respondent did not dismiss the employee. It was her "absolute belief" that he resigned.

Determination

Dismissal was in dispute between the parties.

The events of 15 December are crucial in determining whether there was a dismissal in this case. It was common case that the meeting of 15 December became heated. The Tribunal accepts that the employee, who was unaccompanied at that meeting, became nervous and intimidated and left the meeting. Any ambiguity that might attach to the words uttered by the employee as he left the meeting is clarified by his subsequent action, of returning to the workplace that morning and submitting a medical certificate to cover his absence from work. This is not the action of someone who has left his employment. He continued to submit medical certificates for some time. For these reasons the Tribunal finds that in walking out of the meeting on 15 September the employee did not resign. The employee was dismissed when he was served with his P45. Accordingly, there was a dismissal. As there were no grounds to justify the dismissal, the Tribunal finds that the dismissal was unfair. The appeal under the Unfair Dismissals Acts, 1977 to 2007 fails and the Tribunal awards the employee €18,500.00 as compensation under the Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)