

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD2480/2009
MN2331/2009

against
EMPLOYER

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin
Members: Mr. P. Casey
Mr. D. Mcevoy

heard this claim at Cork on 21st October 2010 and 20th January 2011

Representation:

Claimant:

Mr John Kane, SIPTU, 4 Church Street, St Johns Square, Limerick

Respondent:

Smyth O'Brien Hegarty, Solicitors, 24 Lower Abbey Street, Dublin 1

Respondent's case

The respondent outlined the incident that led to the claimant being dismissed. It was alleged that on 10th February 2009 the claimant was involved in an argument with a colleague and that during the course of that argument the claimant struck his colleague on the face.

An investigation was carried out and witness statements were taken. Throughout the disciplinary process and appeal hearing CCTV footage of the incident was also viewed by all those involved. This CCTV footage and witness statements were also presented as evidence to the Tribunal.

Different witnesses gave evidence as to their involvement in the distinct stages of the disciplinary process from the initial investigation to the disciplinary hearing and the appeal hearing. The decision makers in both the disciplinary hearing and the appeal hearing considered the claimant's allegation that he had been provoked prior to striking his colleague. However they were satisfied that although there was a verbal altercation between both employees that the claimant took a step too far in striking his colleague and that his colleague had not struck him. The actions of the claimant constituted serious misconduct as defined in the company's employee handbook and the

decision to dismiss was seen as the appropriate sanction..

The other employee involved in the incident was suspended for two weeks and given a written warning.

Claimant's case

The claimant gave his account of the events that led to the altercation between himself and a colleague on 10th February 2009. The argument began when a pallet that the claimant had placed on the weighing scales was removed by his colleague and placed in a position that blocked the claimant's access. The claimant asked his colleague to move the pallet but he refused to do so and the claimant had to struggle to get past the pallet. Both employees then began to shout and swear at each other. The claimant walked towards the manager's office and his colleague followed him. At this point the claimant alleged that his colleague struck him and that he struck back. According to the claimant he pushed his colleague with an open hand into the face as opposed to hitting him with his fist.

The representative for the claimant contested that to dismiss the claimant was too harsh a sanction given that his colleague was only suspended and given a written warning.

Determination

Having considered all the evidence including CCTV footage the Tribunal is satisfied that the claimant struck a colleague during an altercation. Fair and proper procedures were followed in reaching the decision to dismiss. Accordingly the Tribunal finds that the dismissal was not unfair and the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

