

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1936/2009

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Ms A. Gaule
Mr. P. Woods

heard this claim at Dublin on 19th November 2010 and 8th April 2011

Representation:

Claimant : Ms Cathy McGrady B L instructed by
Brian O'Brien, Solicitors, 129 Capel Building, Mary's Abbey, Dublin 7

Respondent : Mr Tom Mallon B L instructed by
Arthur Cox, Solicitors, Earlsfort Centre, Earlsfort Terrace, Dublin 2

The determination of the Tribunal was as follows:

Respondent's Case

The events leading to the dismissal of the claimant related to his alleged conduct and state of health while servicing as a cabin crew member on flight from San Francisco to Dublin. That overnight flight departed on 20 March 2009 on an airbus A320. Its normal staff component was ten but in this case it was reduced by one due to the illness of a crew member. This aircraft needs a minimum of eight staff to allow it to operate normally. The supervisor of the flight attendants is called a cabin manager.

The manager for training and standards of cabin crew outlined the regulatory requirements for all flight staff. Those requirements included the necessity for all staff to report for duty in a fit state of mind and body. In the event that this does not occur then, under certain circumstances, passenger and crew safety could be compromised and the general operation of the flight might be threatened. However, this witness had no input or involvement with this particular case.

The base manger of cabin operations referred to the cabin crew handbook colloquially known as the

bible. It was expected that all staff knew the contents of that handbook “inside out”. Among its contents were the probation of the intake of alcohol and certain medicines including illegal drugs prior to taking up duties. This witness was furnished with two investigation reports into the conduct of the claimant on board that above-mentioned flight. The second report recommended that this case proceed to a disciplinary hearing. In acting on that recommendation this witness set up such a hearing to which the claimant was given a written invitation. She also understood that he had been earlier furnished with copies of those investigation reports. From the respondent’s point of view there was no dispute over the facts of this case.

This disciplinary hearing that took place on 14 April 2009 commenced with a reading of those reports and a reaction by the claimant that he had not been aware at the time of consumption that he had taken marijuana in a biscuit (aka a cookie). However, the witness had understood from the claimant that he had knowingly consumed that illegal substance and was under its influence during that flight. That knowledge came subsequent to his consumption of the biscuit and prior to his reporting for duty the next day. The witness accepted however that at the briefing prior to that flight’s departure that no concerns were expressed at the claimant’s mental or physical state. She viewed some of the claimant’s comments and answers at the disciplinary meeting as contradictory and confusing. Two days later she wrote him a lengthy letter that contained the news that she had no other option but to terminate his employment on the grounds of gross misconduct. She was satisfied this was the correct decision based on the claimant’s behaviour which was contrary to the regulatory requirements.

Apart from noticing that the claimant appeared sad the senior cabin crew member on flight EI146 on 20 March 2009 had no basis to believe that he was other than in a fit state to perform his duties on that lengthy flight. Indeed he undertook those tasks in a normal fashion prior to and during take-off. That situation changed, however, within a short time of being airborne when he started to complain about the apparent behaviour of certain passengers towards him. Altering his location in the aircraft did not dilute that situation. On the contrary his demeanour worsened as he became somewhat delusory. He told the witness of his illness and asked her to be discharged from duties. She agreed to that request and once acted on, the claimant took up a resting position in the aircraft. This witness wrote and submitted a written statement to the investigation team dealing with is case.

Another cabin crew member on board that flight told the Tribunal that the claimant had become very agitated within thirty minutes of take-off. This witness also noticed that the claimant seemed depressed prior to boarding this airbus. This witness also penned a hand written report of his experience of this event and furnished the investigation with it. Among other things, he stated that at all times the other crew members acted professionally throughout the flight as they continued to carry out their duties.

Claimant’s Case

The claimant commenced employment as a cabin crew-member with the respondent in November 2006 and given a permanent position with the company in May 2007. In November that year he was sanctioned by the respondent for his misbehaviour while conducting his duties. The status of that final warning expired twelve months later. The claimant also adversely came under the respondent’s attention in spring 2009 but no disciplinary action was taken. While in his late teens the claimant consumed marijuana and as a result of that experience rejected and avoided its subsequent use.

Upon arrival at San Francisco airport from a flight from Dublin on 15/16 March 2009 the claimant sought and was given permission, subject to the normal requirements, to take his “downtime” in a place and location other than the hotel used by the airline crew. He spent that time in the company of friends and acquaintances in a residential setting close to the coast at Santa Barbara. He told the Tribunal that he was present there when a spontaneous house party developed in mid afternoon on 19 March approximately twenty four hours prior to the take off of the aircraft he was due to man the next day. In the early stages of that party the witness eat what he saw and consider to be a normal looking chocolate biscuit. By early evening his body and mind were in such a state for him to conclude he was both physically unwell and mentally unstable. The reason for that condition was relayed to him by his companions in telling him that the normal looking cookie contained cannabis.

The claimant took a shower in an attempt to dispel and wash away the unwelcome effects of consuming that illegal drug. During the course of that party and in addition to the intake of marijuana the witness had also swallowed “over the counter” diet pills and had downed several units of alcohol. He retired to bed at around 23.00 and by 06.30 the next morning he was up and on his way to Los Angelus airport for a relatively short flight south to his workstation at San Francisco airport. He managed to gab some sleep on that trip and arrived in ample time to meet and greet his fellow crew members for the long haul journey to Dublin.

During the briefing with crew members and subsequent interaction with the boarding passengers the claimant felt fine and performed his tasks without incident. While he was aware of the regulations regarding illegal substances and alcohol consumption prior to his working schedule the claimant did not consider it necessary to report his recent encounters with those products as he was not feeling unwell and his intake of them were outside the time allowed for their intake. Besides he learned that due to the illness of another crew member the aircraft was already down one staff and he did not want to add to that number. The witness added he was unaware that the consumption of diet pills was also prohibited under certain circumstance by the airline and that he was obliged to inform the cabin manger that he had taken them.

Within thirty minutes of take off the claimant’s mental state changed to such an extent he felt excessively watched by some passengers. That situation deteriorated to a form of paranoia and physical decline. His request to take a break in the rest area was refused but he was moved to a different section of the aircraft. That change in location did not alleviate his well-being and when he asked the senior cabin member to be stood down on health grounds she allocated him a place where he could rest and hopefully recover. The claimant remained in that place up to thirty minutes prior to landing the next morning. It was his belief and understanding that in the course of these events the passengers were not aware of his condition and that the operation and safety of the aircraft, crew and passengers on the flight was not compromised.

The claimant found himself attending a disciplinary hearing into this event following two investigation meetings where the claimant was represented by a trade union official. He had not been presented with copies of statements of crew members prior to that meeting nor been informed of the outcome of that investigation. While the claimant accepted his behaviour and actions before reporting for duty were, in some respects, wrong he viewed the sanction of dismissal as being too harsh. The moment he felt unable to perform his duties he altered his manger to that fact, as he was obliged to do.

Determination

The Tribunal, having carefully considered all of the oral and documentary evidence in this case, is satisfied about the following fact: In the days and hours before reporting for duty with the Respondent, the Claimant had consumed a mixture of alcohol, diet pills and cannabis. Regarding the cannabis, there is an issue as to whether he was aware of the existence of the cannabis in the biscuit he ate 22 hours before he reported for duty. This is not relevant because the Claimant before reporting for duty, had been informed of the fact that he had consumed cannabis and he was plainly aware of the bouts of hallucinations and paranoia he suffered. The important point is that – despite the awareness of the traumatic effect on his health and in particular, his mental health – he failed to report same to the Respondent’s management in good time. But the Tribunal, significantly, notes that it was the Claimant and not the Respondent who drew attention to the issue of the Claimant’s incapacity to attend to work duties. The Claimant notified the Respondent of this within a half hour of the flight taking off. Nonetheless, the fact that he reported for duty against this backdrop of events was serious. The Tribunal believes that by his acts and omissions, the Claimant was guilty of serious misconduct. Taken in conjunction with his previous employment record, the decision of the Respondent to dismiss the Claimant was justified. Quite understandably, the Respondent no longer had trust and confidence in the Claimant to carry out his duties as a crew member aboard a passenger flight.

The matter was investigated by the Respondent Disciplinary procedures followed soon after and the Claimant was dismissed from his employment. He was afforded the right of appeal which confirmed the decision to dismiss him. At all material times, he was given the right to be represented by a senior and experienced trade union official. At the hearing before this Tribunal, the Claimant raised issues about the Respondent’s failure to notify him of the findings of the investigation and to furnish all of the witness statements taken. The Tribunal believes these failures amounted to shortcomings and is critical of them. However, it does not accept that they were so significant as to render as unfair, the procedures used to effect the dismissal.

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

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

