

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE

- claimant

CASE NO.

MN1935/09
UD2070/09

Against

EMPLOYER

- respondent

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: Ms O. Madden B.L.

Members: Mr J. Horan
Ms. E. Brezina

heard this claim at Naas on 25th November 2010 and 19th April 2011.

Representation:

Claimant: Mr. Saul Woolfson BL instructed by Sinnott & Company, Solicitors, 15 Belgrave Road, Rathmines, Dublin 6

Respondent: Mr. Boyce Shubotham, William Fry, Solicitors, Fitzwilton House, Wilton Place, Dublin 2

The determination of the Tribunal was as follows:-

Opening Statement by respondent's legal representative:

The respondent is a UK based company supplying and servicing coffee making machines to large multi-nationals. The coffee machines are of a commercial grade and capable of making several hundred cups of coffee per day. For correct and consistent quality all water used by the coffee making machine is treated by a special filter, which is connected to the coffee machine. Filters are replaced on a regular basis depending on the number of coffees made by the machine. A message appears to say when filter needs to be changed.

The claimant was employed as a service engineer to service and deal with any mechanical or other breakdowns that happen in the course of the machine's life.

On 26th March 2009 a service call was received from a large multi-national store (MC), which is located in Blanchardstown requesting a filter change. The call was recorded on a central computer system known as “Cognito” or “Cogi”. The system remotely sends a list of jobs to service engineers handheld computers with details of the jobs to be done each day. The claimant was sent the service call to company MC on that day.

According to the information entered by the claimant on his handheld computer, he arrived at the premises at 9.45 and left at 9.53. He did not carry a filter with him into the store. The manager of the store alleges that the claimant said that AL had changed the filter but had forgotten to reset the filter counter. The claimant accepts that he did not replace the filter, did not check to see whether it had been changed by anyone before him, he reset the filter counter and inserted in his cognito that he “changed the filter” and supplied a filter. He claimed a person AL signed for the job.

The whole issue came to light when store MC contacted the respondent. They had been charged for a replacement filter.

The respondent contends that the claimant had no intention of changing the filter, pretended a previous engineer had replaced it and that he (the claimant) reset the counter and signed the handheld computer himself as “AL” who he claims was working in the store at the time to sign his handheld computer. Through the disciplinary process the claimant stated that he thought the engineer who had previously been in the store had changed the filter. The replacement filter in question costs €300.00.

Opening statement by Counsel for claimant:

The claimant had an exemplary record. He had never received any warnings or had never attended disciplinary hearings. The issue revolves around this incident.

The investigation process was flawed, CCTV footage requested was never produced, and statements that were taken were never furnished to the claimant. While some confusion arose over the filter, the company ended up paying for the filter. This in no way justified a dismissal. It was not the claimant’s function to charge the company for the filter, Head Office creates the invoice. It invariably happens that errors occur and companies get charged. This could easily be rectified with a credit note. Problems had occurred for some time with the Cognito system. The claimant’s manager Mr. F acknowledged there were problems. Immediately before the disciplinary hearing the claimant met Mr. F who let him know that LT “had dismissed people for less”. The dismissal was pre-meditated.

The decision to dismiss the claimant was grossly disproportionate. The claimant had no prior difficulties with his job.

Respondent’s Case:

PF is Operations Manager for Ireland and four service engineers report to him. PF also attends to service/breakdown calls. The respondent has 800 clients in Ireland and store MC is their biggest.

Store MC logged a call for a new filter with the respondent on 26th March 2009. The claimant called to the store on 28th March 2009 but did not change the filter that day. The Operations Manager in the store subsequently spoke with PF when the store was invoiced for a new filter. PF

visited the store and spoke with the Operations Manager. PF had proof on the hand held computer screen that AL had signed for the new filter on 28th March 2009. It emerged that AL did not work in the store. PF then believed the company had been incorrectly charged and arranged for a filter to be fitted free of charge. The respondent's accounts department generates an invoice on the basis of the engineer's input to the cognito system.

An investigation was carried out by Head Office and statements were taken. PF brought the matter to the claimant's attention.

Prior to the disciplinary hearing of 7th May 2009 PF met with the claimant. He had got on well with the claimant. PF wanted the claimant to come clean and admit that he had forged the signature. PF could not recall if he discussed the claimant's concerns about his tax issues at that time. The claimant understood that A had changed the filter the previous week and had not reset the machine.

The disciplinary hearing took place on 7th May 2009. In attendance were PF, company witness LT, the claimant and his witness AB. PF contended that he thought the claimant had been furnished with a copy of his statement taken on 27th April 2009 prior to the hearing. The claimant had been furnished with all the necessary documents. The claimant referred to service calls sent to him for filters to be changed on occasions and when he arrived at different stores he discovered that they had already been dealt with. He produced a written account of these calls. In relation to the filter change in store MC, the Store Manager (S) had told him that A who had been in the previous week had changed the filter. She asked him if she needed to sign the book and he replied no. The claimant recorded on his computer that the filter was changed as he thought A had forgotten to do it the previous week. He contended that he was acting in the best interests of the company. The disciplinary meeting adjourned for approximately thirty-five minutes to consider the evidence. When the meeting was reconvened PF informed the claimant that he was being dismissed and that he had a right to appeal this decision.

Subsequent to the hearing PF completed the disciplinary outcome record. The offence that occurred was deemed to be serious and damaging to the company's relationship with this major customer. The claimant had gone to the store, did not check to see if the filter had been changed and the respondent could not verify the signature on the cognito. There was a serious breach of trust and confidence in the claimant, which brought the respondent's name into disrepute.

PF contended that the claimant should have carried out several checks on the filter that day, namely, looked at the filter, looked in the history book or phoned Head Office about the call out. He thought this was laziness on the claimant's part and believed the claimant tried to save himself time that day as he was travelling to the country after the call out.

The claimant had been a good worker during his tenure.

Over a two week period, the claimant trained AB, Service Engineer, on the job. AB travelled in the van with the claimant to call outs. On occasions the claimant would drop AB home around 2.30 pm and the claimant would sign off on the job at 5.30 pm. AB was aware of the cognito problems. Most of the parts were carried in the van.

It took approximately ten minutes to change a filter. Store MC replaced four filters per year.

Claimant's Case:

The claimant commenced employment on 1st April 2008 and was employed as a Service Engineer. He had no difficulties in his job and had no cause for reprimand. He worked alongside four service engineers. He received call out jobs on his cognito and PF called him also with such jobs.

Goods were transported from the UK in bags and boxes and some were palletised. In the UK service engineers looked after certain parts while in Ireland the service engineers looked after all parts.

The cognito displayed the job to be done but sometimes when he arrived at the call out job there could be another problem. Other times when he called to do a particular job the job had already been done. He raised these issues with PF, as did the other service engineers.

He had tax concerns and raised these with PF. PF said he would look into them. They were not addressed.

On 28th March 2009 he received a call out to store MC in Blanchardstown. He parked the van at the side of the building. He did not carry a replacement filter in with him to the store. He went up to the counter and met S who was behind the counter. The coffee machine was facing him on the opposite counter. He told her he was there to change the filter. She responded that his colleague had been there already and had changed the filter the previous week. He took her word for it and had no reason to doubt her. He did not check the details on his cognito and accepted he should have done. He looked at the filter and saw 'change filter' on the machine, and presumed his colleague forgot to adjust the screen. He then put his card into the machine and reset it. He then looked for S to sign for the job but she was not there and instead he asked another member of staff, AL, to sign his cognito. The claimant assumed everyone had authority to sign off on jobs. He inserted filter change into his cognito as he was told if in doubt to charge the customer because if it was discovered afterwards they could not charge the customer.

He recognised AL as he had seen him in the store on previous visits. He left the store at 9.53 am and when AL signed his cognito he closed down the job.

The claimant did not recall telephoning the Call Centre or A afterwards.

The claimant spent two to three months looking for a job after the termination of his employment but to no avail. He then set up his own business but has incurred losses.

Determination:

The Tribunal carefully considered the evidence adduced at this two-day hearing. Having regard to all the circumstances the Tribunal finds that there were not reasonable grounds justifying the dismissal. However, it is clear from the evidence that the claimant by his own actions contributed significantly to his own dismissal and as a result the financial loss incurred by the claimant was attributable to those actions.

The Tribunal finds that the claimant was unfairly dismissed and awards him €12,000.00 under the Unfair Dismissals Acts, 1977 to 2007. The Tribunal also awards the claimant €689.65 being the equivalent of one week's pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)