

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD2111/09

- claimant

against

EMPLOYER

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr C. Lucey
Mr P. Trehy

heard this claim at Dublin on 6th December 2010, 12th May 2011.

Representation:

Claimant: Mr Andrew Maher, 21 Westbourne Grove, Clondalkin, Dublin 22 on the first day of the hearing.

In person on second day of hearing.

Respondent: Ms Rosemary Mallon BL, instructed by Arthur Cox, Solicitors, Earlsfort Centre, Earlsfort Terrace, Dublin 2

Opening Statement by Counsel for the Respondent:

The claimant was employed as an Event Manager. In essence, his role was to input data in relation to sporting events into the respondent's website. It was very important that data was inputted correctly. The claimant made numerous errors in this regard. In the first disciplinary process carried out the claimant received a first written warning. Following that a new manager was appointed. She conducted a performance management process with the claimant. A second disciplinary process then followed and the claimant received a written warning. Errors continued to occur which resulted in the claimant being dismissed. The claimant appealed this decision and it was upheld. The claimant was afforded fair procedures. He was then told not to input data on GAA matches. He ignored that direction. The dismissal was justified, fair and reasonable. Concentration was clearly an issue. Minutes of meetings were recorded and transcribed verbatim.

Respondent's Case:

(VL) assumed the role of Head of the Event Department in March 2008. She then became the claimant's manager. The claimant was responsible for uploading and settlement of events onto the respondent's website. The internet represents 65% of the respondent's business. On 9 April 2009

(VL) attended a meeting with the claimant. The claimant's sick leave, breaks, phone calls and the need to improve his work performance were discussed. More concentration and extra care was needed in relation to the setting up and settlement of events. Errors were creeping into the claimant's work. The claimant was aware that he needed to give more attention to detail.

(VL) knew the claimant was well capable of doing his job. Following an email from a trader complaining of errors (VL) sat with the claimant and discussed the said errors. A performance management plan was put in place for the claimant. The goal was to get the claimant back to being comfortable doing his job. Weekly meetings were arranged. The main objectives were concentration, multitasking and prioritising events. The claimant knew his role and never said he could not understand it. It was stressed to him that it was very important to double-check everything and more work was needed on concentration. In the second week's review the claimant agreed he did not perform well and silly mistakes had occurred.

The claimant was asked not to input GAA data onto the website. Towards the end of June 2009 more and more errors were occurring. The claimant was asked to attend an investigation meeting on 14 July 2009 to discuss his performance and operator errors. The meeting was recorded. The claimant's errors were discussed. The claimant had two main issues, working a late shift until very late at night followed by an early shift the next day, which could have resulted in errors occurring in his job and the taking of breaks. (VL) contended that the claimant took his breaks. (VL) referred to the GAA results being inputted into the site and stressed that the claimant had been told not to touch the site. At the conclusion of the meeting the claimant was informed that the issues discussed at the meeting would be further discussed and a decision would then be taken as to whether disciplinary action was going to be required.

A disciplinary meeting was held on 20 July 2009. It was pointed out to the claimant that when errors occurred in the claimant's work he had not worked the late shift the night before. The level of errors was unacceptable. The issue of inputting GAA data was further discussed and the clear instruction for him not to do so. The meeting adjourned and a decision was made that the claimant be issued with a final written warning. The claimant was invited to attend an investigatory meeting on 11 August 2009 to discuss his failure to follow instructions concerning completing GAA tasks and also a number of operator errors. He was suspended on full pay with immediate effect. The claimant was invited to attend a disciplinary meeting on 12 August 2009. The claimant also attended a second disciplinary meeting the following day. Following the claimant's failure to follow instructions assigned by his manager and the failure to satisfactorily perform the duties of his role to an acceptable level a decision was taken to terminate the claimant's employment.

Under cross examination (VL) confirmed that a performance management plan was introduced for the claimant to help reduce and eliminate his errors. At those meetings extra training was offered to the claimant but this offer was refused. The claimant attended 5/6 meetings as part of his performance management plan and was provided with written updates on his progress after each meeting. The claimant's explanation for his high error rate was a lack of concentration. It was explained to the claimant that his performance must improve. He was instructed not to touch the GAA work and he agreed not to do so. However he totally disregarded that instruction and continued to do the GAA work. (VL) accepted that the claimant should have been provided with his final written warning earlier than it was given to him. The delay was as a result of her being on holidays and the written warning was retained on his file.

The next witness (EL) gave evidence that he heard the appeal into the claimant's dismissal. He was not familiar with the claimant and never had any contact with him prior to hearing the appeal. He

conducted a thorough appeal and listened to recordings of all the meetings attended by the claimant throughout the process. The claimant never disputed any of the errors he had made. The witness concluded that none of the errors made by the claimant occurred where inappropriate shifts had been worked. All of the errors made by the claimant occurred when he worked on 8am to 4pm shifts. He concluded that while the various stages followed by the respondent were not faultless they did not materially affect the outcome. The decisions reached by the respondent were fair and justified and he upheld the decision to dismiss the claimant.

Claimant's Case

The claimant gave direct evidence that he worked for the respondent initially in the customer care department for over 2 years. He never had any difficulties in that department and enjoyed a good work record. He then moved to the event management department and regularly worked 12 hour shifts without lunch breaks. He accepted that he made errors in his job and these errors were unacceptably high. He believed he made those errors because of the nature of the job. He agreed that as a result of those errors a performance management plan was introduced but he did not find this plan helpful. He believed that the plan was simply a mechanism of pointing out the errors he had made and nobody really explored the reason as to why he was making those errors. He did not accept that the plan set out key objectives for him. He accepted that he was given an instruction not to carry out GAA work and he did not dispute that he breached that instruction. He did the GAA work because he did not feel confident to ignore the GAA work in the presence of other employees when it was there to be done. He accepted that he was aware from an early stage in the disciplinary process that dismissal could be a possible outcome and that he had breached a fundamental term of his contract by not obeying a reasonable instruction. He told the Tribunal that the disciplinary procedures followed by the respondent were not correctly followed. When he sought to return to the customer care department where he enjoyed a good work record he was told that there was no work available in that department. He did not believe this to be true as there was a regular turn around of staff in that department.

Determination

The Tribunal, having considered all the evidence adduced by both parties is of the view that the respondent adhered to all the relevant procedures in coming to the decision to dismiss the claimant. There were ample grounds, in particular his failure to adhere to direct and unambiguous instructions not to carry out certain tasks and he ignored those instructions on numerous occasions. Accordingly The Tribunal determines that the decision to dismiss the claimant was fair and reasonable and finds that the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)