

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE
-claimant

CASE NO.
UD1435/2009

against
EMPLOYEE
-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Herlihy

Members: Mr T. Gill

Mr F. Dorgan

heard this claim at Ennis on 22nd June 2010

Representation:

Claimant: Mr Conor Glendon, Conor J Glendon
& Co, Solicitors, Ard Na Gréine, Clonroadmore,
Ennis, Co Clare

Respondent: Mr. Alistair Purdy Solicitor
Purdy Fitzgerald, Solicitors, Kiltartan House,
Forster Street, Galway

Claimant's case:

The claimant worked as a till operator with the respondent and in the restaurant. The respondent was a shop restaurant and bar. The claimant told the Tribunal that on 9th December 2008 he received a letter terminating his employment (because of his unauthorised use of the company phone for personal business). He had made phone calls to his home country of Mauritius. Then by letter of 23rd January 2009 he was re-instated and the sanction of dismissal was reduced to a final written warning.

He had worked as a cashier prior to the incident and after he worked in the restaurant. The managers treated him differently after his return in January 2009. He only worked on the till once after January. He was not told when to take breaks. He did not get his breaks on time and if it was busy he did not get a break. He was on medications/ had a back problem. He told his employer of these difficulties. Other employees were told at the start of their shift when their breaks would be. The managers treated him badly and picked on him. They told him "pick up the pace" and "do this do that". If he went to the toilet they would time him.

His final day of work was 14th February 2009 in which he worked from 10.30 am to 4.30 pm. On that day a manager kept telling him to "pick up the pace". Also on that day he did not get a break at all. He could not take medication for his back.

Cross-examination

It was put to the claimant that he did not go through the procedures and the claimant replied that he did not see what the point was as it would be the same managers (as before/that he would have been complaining about). He was asked if he admitted that he did not follow procedures and he replied “yes”.

Respondent’s case:

The Tribunal heard evidence from a witness for the respondent. She told the Tribunal that it was she who heard the appeal of the claimant on 28th July 2009 regarding his dismissal.

She explained that the claimant’s previous role had been to stack shelves and to work on the till. He had worked in distribution before that. When the witness was asked if the jobs were different she replied that there was some customer interaction and in his previous role he stacked the shelves and did the till.

The first she heard that anything was amiss was the letter from the claimants solicitor dated 26th February 2009. She enquired of other managers and was told the claimant called in sick. She wrote to the solicitor for the claimant. She wished to follow up with the claimant’s solicitor as previously the claimant had followed procedures.

The witness explained that they have very structured grievance procedures and all of the employees are aware of the procedures. The procedures are there to protect the employees as much as the company. She herself (as HR person) was present on a daily basis and she was very accessible.

In cross-examination the witness explained that the claimant had been dismissed and he had appealed his dismissal. He was re-instated and the sanction was replaced with a final written warning.

In answer to a question the witness explained that the claimant was in a new unit and “perhaps the managers were offering direction” (to the claimant).

Determination:

In this case the onus was on the claimant to prove his case of constructive dismissal. Having heard the evidence adduced the Tribunal are unanimous that the claimant did not prove his case. The claimant did not engage with the grievance procedure. The claimant did not give the situation the necessary attention that was required. The particular case is one of constructive dismissal and it is essential for the claimant to follow procedures in the same way that it would be necessary for an employer to follow procedures in dismissing an employee; it “Mirrors” an ordinary dismissal.

The Tribunal also note that a manager of an employee must be allowed to manage, i.e. to assign tasks and to supervise work. In this case they did so and in this case it was reasonable for managers to do so. It was also reasonable of the employer to hold open the claimant’s job for him. Accordingly, the claim under the Unfair Dismissals Acts 1977 to 2007, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

Sgd.) _____
(CHAIRMAN)

