

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE - claimant

CASE NO.

UD357/10
MN327/10

Against

EMPLOYER - respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. R. Maguire BL

Members: Mr F. Moloney
Mr P. Woods

heard this claim at Dublin on 2nd September 2011.

Representation:

Claimant: Ms Christine O'Donoghue BL, instructed by Terence Lyons & Co. 4 Arran Quay,
Dublin 2

Respondent: Mr. Lorcan Connolly BL, instructed by Kieran Mulcahy, Solicitors, 70 O'Connell
Street, Limerick

The determination of the Tribunal was as follows:-

Respondent's Case:

The respondent is a ground handler for general aviation in Dublin airport providing many services such as refuelling and catering. IP is General Manager.

In February 2007 all staff were issued with the company handbook. On 6th March 2007 IP reissued employees with the handbook and everybody acknowledged it except the claimant and another part time employee.

The respondent's disciplinary policy has five stages:

1. Counselling
2. Verbal Warning
3. Written Warning
4. Final Written Warning
5. Dismissal

In April 2009 a note was passed to IP relating to a member of staff and he was asked to investigate the matter. The author of the note appeared to be the claimant. IP together with the Operations Manager (SC) met the claimant on 1 April 2009 to hear his side. The claimant did not deny writing the note. It was explained to him that such behaviour was unacceptable in the workplace. He wanted to know if he was accused of bullying. The claimant said that the fuel trucks were not being loaded at the end of each shift. He became very aggressive towards IP and SC and said he would be dealing with his solicitor. He got up and left in an aggressive manner and left the room slamming the door. He also left the premises without authorisation. HQ were then informed.

A verbal letter of counselling was recorded and subsequently a letter of counselling was completed. This recorded that the claimant had left the worksite without permission. The written warning would remain on the claimant's file for one year. The claimant refused to sign this the next day. Both IP and SC signed the documents and forwarded them to HQ.

A complaint was received from the captain of an aircraft of an incident that occurred on 4 October 2009. Issues raised concerned the fueller (the claimant) demanding a fuel card from the captain, the claimant parking his truck in front of the aircraft, using abusive language and opening the door of the aircraft.

IP deemed the incident to be of a very serious nature. The claimant was asked to furnish a report of the incident in question and did so on 8 October 2009. IP took time to consider the claimant's report. The report raised serious safety concerns such as the claimant positioning his fuel truck in front of the aircraft and so preventing its departure and attempting to open the aircraft door. IP drafted a final written warning letter, which would form the basis of a disciplinary hearing the next day.

The claimant refused to attend the disciplinary meeting the next day, 9 October 2009 without his solicitor present. IP contended that it was an internal company matter and saw no need for the claimant to have a solicitor present. The respondent did not agree to his request to have a solicitor present and provided him with JMcD as a witness for that meeting. The respondent viewed this as insubordination. At that time the claimant's job was not under threat and a final written warning would have issued. IP and JMcD signed the final written warning letter. This was emailed to senior management.

The next day, 10 October 2009 IP attended at work and wanted to meet the claimant. IP wished to discuss matters. The claimant refused to attend that meeting. The claimant accepted the decision to dismiss him and handed back his pass.

Claimant's Case:

The claimant commenced employment in February 2007 as an aircraft refuelling technician. His job entailed refuelling aircraft. Initially he worked alone and was on 24-hour call. In March/April 2007 new staff were employed.

He was given a contract of employment but could not recall if he had signed it. He had no issues at work.

He often spoke to his manager about fuel trucks not being loaded at the end of each shift. He frequently had to drive to esso and load the truck and found it most annoying. Staff often would not keep the trucks full. He wrote a note for the employee working the late shift. Two to three days later he was asked to attend a meeting with IP and the Operations Manager (SC). IP had a copy of the note. He was questioned about the note. The claimant wanted to know if anyone had accused him of bullying. He left that meeting and turned off his phone. He realised after that he should not have.

On 4th October 2009 two aircrafts required refuelling. Company procedures require that aircraft not be refuelled without a fuel card. The claimant approached one aircraft as the captain was pulling the shocks from the main landing gear. He asked the captain if he required fuel. Fuel was required for the aircraft and the claimant asked the captain for the fuel card. The captain said that company LA had the details. The claimant again told the captain that he needed the details, as he had to complete a triplicate fuel docket. The captain started using abusive language. The captain subsequently closed the aircraft door. The claimant remained calm throughout this time and never used any bad language. He had no reason to make a scene. In the meantime the claimant received a phone call from the office who gave him the relevant details to complete the refuelling and dockets. He parked his truck in front of the aircraft to prevent the captain departing. He tried to give the fuel docket to the captain but he would not accept it.

Two days later IP asked him to complete an incident report form. He furnished that report on 8th October 2009. He asked IP if the captain of the aircraft had made a written complaint about the incident. He had not. The claimant was never told it was a serious issue or warranted disciplinary sanction.

On Friday, 9th October 2009 IP and SC asked him to attend a meeting. He was told it was a disciplinary meeting. The claimant said he would like his solicitor present with him. As it was late in the evening the claimant was unable to contact his solicitor. The meeting did not proceed and IP agreed to postpone the meeting to the following week to afford the claimant the opportunity to have his solicitor present. IP came into work the next day and asked the claimant to attend a meeting with him and SC. The claimant was handed two envelopes, one containing a copy of a company personnel guidebook and a written warning and the second envelope containing a letter of dismissal. He did not deem the incident that occurred on 4th October 2009 to be a serious issue. He had not received a letter of warning from the company.

On 20th October 2009 the claimant appealed the decision to dismiss him. He received no reply to that letter. He was issued with his P45. He has applied for numerous positions but has not secured employment since his employment was terminated.

Determination:

The respondent failed to discharge its onus that the dismissal was fair in all the circumstances. The dismissal resulted directly from the claimant's refusal to attend a disciplinary hearing designed to inform him of the sanction already decided without a solicitor. The claimant said that the respondent had agreed to allow him bring a solicitor and to postpone that meeting. Even if this were not the case the respondent had not given adequate notice on 9th October 2009 nor had they informed the claimant as to what allegations were made against him nor had the

respondent informed the claimant that a final written warning was going to be given to him for an incident on 4th October 2009.

In the circumstances it was not reasonable for the respondent to dismiss the claimant or warning him of the seriousness of the matter in advance that his employment was imperil and that he would be fired if he did not attend the meeting without representation.

The respondent failed to even abide by their brief disciplinary rules as per the employee handbook in their failing to address the claimant's appeal whatsoever.

The Tribunal finds that the claimant was unfairly dismissed and awards him €30,000.00 under the Unfair Dismissals Acts, 1977 to 2007. The Tribunal also awards the claimant €1522.00 being the equivalent of two weeks 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)