

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE – *claimant*

UD1143/2010

against

EMPLOYER – *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. J. O'Connor

Members: Ms. M. Sweeney  
Mr. J. Flavin

heard this claim in Tralee on 8<sup>th</sup> December 2011

Representation:

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Claimant(s) : Mr. Gearoid Ryall, Mannix & Co Solicitors, 12 Castle Street, Tralee, Co Kerry

Respondent(s): Ms Elizabeth Murphy BL instructed by Mr. Colm Kelly, J B Healy Crowley, Solicitors, Market Street, Killorglin, Co Kerry

The determination of the Tribunal was as follows:-

#### **Respondents Case:**

Ms (HOS) gave evidence. She is the Managing Director of the respondent bakery and also the niece of the claimant. She started in the family business in 1999 and from 2004/05 began to take over the business from (GOS) her father.

Mr. (AG) approached her in January 2010. He said the claimant had thrown a cup of tea over his face and neck while they were working the night shift. She asked the claimant to come to the office the next day and asked (GOS) to attend and asked (P) to take minutes. The claimant

said he spilt tea over his hand and over (AG). Because the claimant was a family member, she asked an external person to conduct the investigation. She then gave the claimant and (AG) accident report forms to complete for the investigation.

The following Monday, she sent the claimant and (AG) a letter to say they were both suspended on full pay pending an investigation. The claimant was also sent a letter to say his meeting with the external investigator would be on the 26<sup>th</sup> January. She hired a translator for (AGs) meeting with the investigator as English was not his first language.

On February 14<sup>th</sup> the external investigator forwarded her report to the respondent. On the 16<sup>th</sup> February (HOS) decided to meet with the claimant and (AG) to go through their statements.

On the 18<sup>th</sup> February she wrote to the claimant inviting him to a disciplinary meeting on Monday 22<sup>nd</sup> February. The claimant then informed her he was asking a Solicitor to represent him at the meeting. At every stage of the process, notes were given of to each party of every meeting.

On the 24<sup>th</sup> February she and (GOS) had a meeting with the claimant and his representative (TB). She told the claimant she did not believe his statement of events and that he was being dismissed. She looked at other areas of the bakery for redeployment but the site was too small.

She informed the claimant that he could appeal her decision. He appealed and she asked (DH) an external HR expert to conduct the appeal. The appeal was heard on the 12<sup>th</sup> March and their decision was upheld.

She is not aware of any injuries or threats to any staff.

Under cross-examination (HOS) said she was aware that the claimant and (AG) had a fractious relationship. The claimant brought her two letters that (AG) had given to him. The first she had seen of the letters was in October 2008. At that time, the respondent had no procedures in place. She gave the letters to her Solicitor and (AG) was brought to a meeting. He said the letters were complaints about the claimant. Following this she issued a warning to both the claimant and (AG) but these were not kept on file. The respondent then put new policies and procedures in place.

She said the relationship between her father and the claimant was strained. The decision to dismiss the claimant was made by her and her father.

**Claimant's Case:**

He joined the respondent in 1978. He loved working in the bakery and working nights suited him. He became a Supervisor but nothing was given to him formally. He never had any complaints against him. (AG) is from Lithuania and joined the bakery in 2007.

When a new employee starts in the bakery, they work for four weeks and then they are put on the easiest machine. Because (AG) had little English the claimant put another employee with him who could translate. On one occasion in January 2008 (AG) was on the divider machine. He cut the dough the wrong size. The claimant brought (AG) and his colleague to the flour room. (AGs) colleague translated for him, he was not getting enough hours and said he would write the claimant a letter.

The following day (AG) gave the claimant a letter. The claimant showed the letter to a fellow employee who advised him to get (AG) to sign it. (AG) signed the letter and the claimant brought it home and showed it to his wife and son. He then telephoned (GOS) and met him at 11am on a Sunday morning. He told (GOS) he wanted the letter dealt with and (GOS) said he would.

The claimant continued to work and (AG) gave him a second letter. Again he showed this to his fellow worker and was advised to get legal advice. He did and rang (HOS) and told her about the letter. She said she was going to write a warning letter to (AG). She told the claimant there was a letter for him in the drawer. When he opened the letter it was a warning letter. He could not believe they had given him a written warning as well. He went to his Solicitor who told him to write to the respondent.

On the 26<sup>th</sup> November 2008 he wrote to (HOS). He got no response. He would work five nights in the bakery and would not see (HOS) or (GOS). Things were not good.

He was in the kitchen making tea around 10:40pm and was talking to a fellow colleague. (AG) was outside shouting abuse at him. He left the kitchen, (AG) kept shouting. He told (AG) to shut up. He turned around, they had contact and (AG) got burned. He bent down to pick up the cup and (AG) kicked him on the back. They both went back to work.

The following day he got a call from (HOS). She came to his house and told him he would be back in work the following Monday. He was devastated given his record and years' service.

Under cross-examination he said if he could turn back the clock he would have walked out of the respondent after he received the second letter. (AG) told him I will make you suffer

He was dismissed for one incident. (AG) had sent him two letters. He did not have any problem with (AG) until after the first letter. He had asked management to deal with the letters but they let the situation get worst.

## **Determination**

The issue before the Tribunal was one of dismissal and whether the employer acted reasonably in the circumstances. The Tribunal finds there were substantial grounds for the dismissal in this case, particularly in circumstances where the claimant a supervisor injured an employee in his care. The claimant was given every opportunity to deal with the issues raised by the company and the company adhered to the correct procedures.

The Tribunal unanimously determines that the dismissal was not unfair. Therefore the claim under the Unfair Dismissal Acts 1977 to 2007 fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)