

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER – *appellant*

UD902/2010

Appeal of the recommendation of the Rights Commissioner in the case of

EMPLOYEE – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms O. Madden BL

Members: Mr J. O’Neill
Mr G. Whyte

heard this appeal at Dublin on 30th August 2011 and 9th February 2012

Representation:

Appellant: Mr Joe Bolger of ESA Consultants,
The Novum Building, Clonsaugh Industrial Estate, Dublin 17

Respondent: Ms Bernadette Thornton of SIPTU,
Liberty Hall, Dublin 1

The determination of the Tribunal was as follows:

This case came before the Tribunal as an appeal by the employer of the recommendation of the Rights Commissioner reference number r-082607-ud-09-TB.

Appellant’s Case

The workshop foreman gave evidence. The respondent worked as a general operative in the workshop. He did finishing work and some welding. On 16 May 2009 the respondent was given a written warning for not wearing safety goggles. When the workshop foreman told him about the breach, he called the respondent to his office. The workshop foreman told the respondent to wear safety equipment to protect his eyes. The respondent said that he wouldn’t breach safety procedures again.

On 15 July 2009 the workshop foreman reported to the production manager that the respondent was again not wearing safety equipment on 2 occasions that day. The production

manager instructed the workshop foreman to call the respondent into his office and talk to him and give him another letter. The respondent would not accept the letter. The production manager was not prepared to jeopardise safety. The production manager had no choice but to dismiss the respondent. He did not speak to the respondent himself but told the workshop foreman to dismiss him. The production manager did not want someone who disregarded his eyesight working in his company.

The accounts clerk gave evidence. Her office is next door to the production manager's office. She can hear what goes on. On the day of the incident she heard the production manager asking the respondent to come in. She heard the respondent say no. Then he said FO to the production manager and then he said sack me. She phoned the production manager after about 2 minutes when she knew that everyone else had left the office.

The workshop foreman gave evidence. On the 15 July 2009 the respondent was welding while wearing a mask without protective glass. The workshop foreman told the respondent to put his mask on. Later that day the respondent was again welding and he was not wearing a mask at all, his hands were over his eyes. The respondent was not examining a finished weld at this time. The arc was struck. The workshop foreman reported the matter to the production manager. The respondent was given a breach of safety notice.

On the particular day the respondent was not under pressure to finish a job. It is not common practice not to wear a mask while welding. The workshop foreman often had to ask the respondent to put on his mask. If someone welds without a mask he is at risk of arc eye.

The production manager gave the respondent a breach of safety notice. The respondent would not accept it and refused to sign it. He muttered a rude word and said to the production manager sack me. The following two days the respondent did not come to work. Then he was on holidays. After his holidays the respondent returned to work and the workshop manager had to talk to him again.

The workshop foreman has a contract of employment that contains a grievance procedure but he is not familiar with the grievance procedure.

The production manager gave evidence. All the staff in production report to him. He does not see every member of staff every day. When the workshop foreman reports a breach of safety the person concerned is brought into his office. The production manager then told him how he was in breach of safety. In 9 cases out of 10 the person does not breach safety again.

A person in breach of safety signs a form acknowledging the breach. The form is kept on the person's file. No sanction is imposed for a breach of safety. Safety is taken seriously. Staff members are trained in safety requirements and notices concerning safety are displayed. It is a serious breach of safety to weld wearing a mask without glass. When replacement glass is needed it is available for the asking in the production manager's office.

The respondent came to the production manager's office. The production manager had signed the breach of safety notice and asked the respondent to sign it. The respondent would not sign it. The respondent did not explain why he would not sign the notice. As he was walking out of the office he said FO and 'sack me'. The production manager was phoned by the accounts clerk. She asked him, did someone say FO to you?

The production manager felt that the respondent's attitude undermined his position. The production manager went to talk with the managing director. The production manager told the managing director that he did not think that he could work with the respondent again. The workshop floor is a dangerous environment. The respondent had an attitude towards safety. The managing director decided to dismiss the respondent.

The respondent did not come to work on either of the two days following the incident. Then he was on holidays. After his holidays he returned to work as if nothing had happened. The production manager brought the respondent to the board room. The production manager told the respondent that he was being dismissed. The respondent understood why he was being let go. The respondent did not ask for his job back. The respondent and the production manager shook hands. The respondent left.

The production manager did not offer the respondent an opportunity to appeal the decision to dismiss him. The production manager was clear that he dealt with the breach of safety. The respondent was dismissed for undermining his authority. The production manager did not consider an alternative sanction for the respondent.

The production manager was not familiar with the appellant's grievance procedure.

Respondent's Case

A colleague of the respondent gave evidence. He was working with the respondent in the workshop on 15 July 2009. The respondent wore a mask with glass in it while he was welding. The colleague of the respondent did not see the workshop foreman speak to the respondent.

At the end of the day the respondent's colleague went to clock out. The respondent did not say FO to the production manager. The production manager did shout at the respondent and tell him to FO.

A second colleague of the respondent gave evidence. On the day of the incident the respondent worked on the same project as his second colleague during the morning. After lunch they worked on different projects. The second colleague did not see the workshop foreman speak to the respondent.

The second colleague went to the production manager's office to get a bandage for a cut. The production manager was shouting at the respondent. Both the production manager and the respondent had red faces. The respondent would not sign the paper.

The respondent gave evidence. At 4.00pm on 15 July 2009 he was called to the production manager's office. He was surprised because the workshop foreman had not spoken to him at all during that day. The production manager told him to sign the safety breach document. He asked to explain his side before signing the document. The production manager did not want to accept any explanation and said that the door was open and that the respondent could go elsewhere.

The respondent left the office and clocked out. He did not swear or curse at the production manager. The production manager often swore at him.

On a previous occasion when the respondent was given a safety breach notice, he was told that unless he signed the document he would be sacked. The respondent felt that on that occasion he was forced to sign the document. When he was given the document on 15 July 2009 he refused to sign it despite knowing he risked being sacked.

When the respondent returned to work the production manager brought him upstairs and told him he had been sacked. He did not shake hands with the production manager. He just left. It was accepted by the appellant that he was not given the opportunity to appeal the decision to dismiss him.

The respondent established his loss for the Tribunal.

Determination

The Tribunal carefully considered the evidence adduced. There was a conflict of evidence concerning the events that led to the dismissal of the respondent. The Tribunal prefers the evidence of the workshop foreman that he did speak to the respondent about safety on the day of the incident. Notwithstanding this, the Tribunal is not satisfied that the appellant followed fair procedures in dismissing the respondent. At the very least he should have been allowed to give his version of events. Also the Tribunal finds that he should have been allowed to appeal the decision to dismiss him.

The respondent contributed significantly to his situation. The recommendation of the Rights Commissioner is varied and the respondent is awarded the sum of €5,000.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)