

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD745/2010

MN698/2010

Against

EMPLOYER

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan

Members: Mr J. Browne

Mr F. Dorgan

heard this claim at Waterford on 10th November 2011

Representation:

Claimant:

Mr Clive O'Regan, Unite, Kyser Street, Waterford

Respondent:

Ms. Mairead Crosby, IBEC, Confederation House, 84/86 Lower Baggot St, Dublin 2

Respondent's case

The respondent is a bicycle and motor accessories retail outlet and the claimant was primarily engaged in building bicycles. He also had some supervisory functions.

There was an argument between the claimant and another employee on 11th September 2009. This argument began on the shop floor and continued into the back store and canteen area, at which point it became an exchange of blows. Both employees were suspended pending an investigation. A disciplinary hearing found that, although the claimant did not start the fight, he could have avoided it by getting away from the other employee. This hearing was held on 16th September 2009 and it was decided to dismiss both employees.

The claimant appealed this decision in accordance with the respondent's disciplinary/grievance procedures and an appeal hearing took place on 20th October 2009. The result of this appeal was to uphold the dismissal of the claimant.

It was acknowledged that a person who was involved in the disciplinary meeting was also a note taker at the appeal hearing. It was also confirmed a position had been advertised on 16th September 2009 but the respondent held that this was not for the vacancy left by the claimant.

Claimant's case

The claimant acknowledged that blows had been exchanged between himself and the other employee. However the claimant held that the other employee was the aggressor and that he was trapped and could not escape from him and only acted in self-defence.

Determination

Having carefully considered the evidence adduced at the hearing, the Tribunal finds that the claimant was dismissed as a result of an incident, being a physical fight, involving the claimant and another employee. On the evidence before it, the Tribunal finds that the claimant did not start the fight. The Tribunal is not satisfied that the claimant could have walked and thus avoided the fight. The Tribunal accepts that the respondent found itself in a difficult situation and acted in good faith. Nonetheless the Tribunal finds that the appellate process used by the respondent was flawed in that a person who took part in the initial disciplinary meeting was also present at the appeal meeting, albeit as a note taker.

The Tribunal noted that the respondent posted an advertisement on 17th September 2009, the day after the first disciplinary meeting and before the appeal was heard, for a person to do similar work to that which the claimant was engaged in.

The Tribunal finds that the Claimant was unfairly dismissed and awards him €8,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal also awards the claimant €486.95, being one week's wages, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

