

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD577/2010

against

EMPL;OYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. D. Hegarty
Mr. J. Flavin

heard this claim in Cork on 20 June 2011 and 15-16 September 2011

Representation:

Claimant(s):

Mr. Eamonn Moloney instructed by
Graham Hyde, Thomas Coughlan & Co, Solicitors,
1/2 Anglesea Street,
Cork

Respondent(s):

Mr. Tom Mallon BL instructed by
Whitney Moore, Solicitors,
Wilton Park House,
Wilton Place,
Dublin 2

The determination of the Tribunal was as follows:-

It was alleged that the claimant, an accountant, was unfairly dismissed after employment with the respondent from August 2007 to 10 December 2009. Reasons for the unfair dismissal claim were alleged to include:

inadequate training in respect of internal systems of work;

inadequate support in respect of internal systems of work;

unreasonable expectations of employer in light of inadequate training/support, workload and pre-existing deficiencies in accounts systems;

large increase in workload as a result of cutbacks in administrative staff; antecedent errors in accounts also to be dealt with;

no reasonable opportunity to address concerns raised by employer:

dismissal disproportionate and unfair;

no opportunity to improve once issues finally identified;

no malice or intention to mislead; no gross or any misconduct;

the claimant had to rely on self-training more often than not;

employer failed to deal with concerns raised re workload and assignment of tasks;

no loss to the company as a result of errors made; no opportunity to improve.

Disputing the unfair dismissal claim, the respondent made out the following case to justify the claimant's dismissal.

The claimant was the accountant in a Cork branch of the respondent. This was a senior position and he had responsibility for the preparation and maintenance of proper and accurate financial accounting records.

However, the claimant did not perform his duties to a satisfactory standard. A disciplinary meeting was held and it was determined that he had made a significant number of accounting errors which had resulted in an overstatement of the accounts. There was a complete and irrevocable breakdown of trust. He had failed in his duty of care and was found to have been guilty of gross misconduct.

The claimant was afforded a right of appeal which he exercised. He was also afforded the right to representation by his solicitors at the appeal hearing. He chose not to exercise that

entitlement.

At the appeal hearing on 3 December 2009 the claimant was afforded a full opportunity to address the complaints against him and to make his submissions. The decision to dismiss the claimant was upheld and his employment was terminated.

The allegations made by the claimant were denied and it was submitted that his dismissal had been fair.

At the Tribunal hearing of this case the claimant said that he did not recall telling the respondent's managing director (Mr. AA) that one of the claimant's accounting reconciliations had been false and that he would never use the word false. It was put to him that it would break trust and confidence if an accountant did a false reconciliation and he was asked if this would constitute gross misconduct. The claimant's reply was that it depended on the circumstances and that he supposed it would if knowingly done. He accepted that the respondent must have trust in an accountant but said that he had scant recollection of the meeting. He accepted that the reconciliation had been wrong and inaccurately prepared. When it was put to him that it had been prepared negligently he replied that he had known that it could be wrong, but that because of stresses in his life it did not enter his head and that the respondent had considered it was false. Asked to accept that his reconciliation had been false, the claimant replied that it had not been deliberate or misleading and that he drew a distinction between false and wrong.

It was put to the claimant that if somebody treated his reconciliation as right the respondent would be misled and that the claimant had been experienced when he joined the respondent. The claimant replied that he had been a farmer and that he had come out of training late. He acknowledged that he had been with a leading firm for three-and-a-half years and that he had been on secondment to a major company. He denied that his curriculum vitae had been embellished.

The claimant accepted that a supervising accountancy firm partner would rely on him and that even a major multinational would have to rely on the accuracy of individual accountants it employed. He accepted that an employee could be disciplined for misleading his or her employer but, when asked if that could lead to dismissal, he did not go beyond saying that it "possibly could".

The claimant stated that he had been under stress and that in his accounting work he had made a lot of journal entries that he would not normally make. He accepted that these could not be explained but stated that there had been no intent to deceive, that he could have sat down with

the respondent to explain and that the respondent could still have confidence in its employee. Asked if the respondent could let an employee make more such entries, the claimant replied that the respondent should help an employee with issues and that any suspicions raised could be rectified.

It was put to the claimant that, once he was suspended, he knew it was serious. He replied that he took it seriously but that he had not known suspension was serious because he had previously seen it in minor matters such as an off-hand comment described as sexual harassment. He added that it depended on the respondent's interpretation of what was serious.

On the question of if his suspension could be anything but serious, the claimant told the Tribunal that there had been concerns in his mind but not for his future with the respondent. Matters had been discussed with him but he had thought that a lot of issues had been resolved. When it was put to him that nothing new had surprised him at the disciplinary stage he accepted this but said that he had thought that all had been resolved.

Determination:

Having listened carefully to the sworn testimony of many respondent witnesses and of the claimant himself, the Tribunal was satisfied that the claimant's dismissal had not been unfair. The claim under the Unfair Dismissals Acts, 1977 to 2007, fails. The Tribunal did not find any procedural shortcoming that would have rendered the dismissal unfair. While the claimant may have had difficulties in his personal life the Tribunal was not satisfied that these affected him to the point of being medically unfit at the material times. The claimant was a qualified chartered accountant and the Tribunal was not satisfied that he had a training need of a magnitude that would have made his dismissal an inappropriate sanction in the circumstances.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

