

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE  
MN827/2010

UD877/2010

against

EMPLOYER

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. L. Ó Catháin  
Members: Mr. P. Casey  
Mr. O. Wills

heard this claim at Cork on 27th September and 30th November 2011

#### **Representation:**

Claimant : Mr. David Gaffney, Coakley Moloney, Solicitors, 49 South Mall, Cork

Respondent : The respondent in person

#### **Respondent's Case**

The respondent is a glass, glazing and mirror company. The group production director told the Tribunal that he had command over approximately ninety staff the majority of whom were not Irish nationals. This witness had thirty-five years experience at managerial level, the last ten of which was spent in his current role. Irrespective of the background and indeed citizenship of all employees they were all treated equally. The two incidents that led this witness to dismiss the claimant on 16 December 2009 started some four weeks earlier.

On 18 November 2009 this witness received a translated report from an evening shift manager. While that report did not state that the claimant refused to carry out an instruction the previous evening the witness said that this was the case. In addition that shift manager indicated to him that the claimant had been aggressive towards him on that occasion. The group production manager described a meeting he had with the claimant and a translator on 27 November as informal. He reminded the claimant that refusing to carry out such an instruction was a serious matter. Besides, such an offence was highlighted in the company handbook, which the claimant had received. According to the witness's notes of that meeting the claimant accepted he did not act on that instruction.

Three days later the witness gave the claimant one hour's notice of a meeting. The nature and content of that meeting was not conveyed to the claimant until the meeting commenced, at which point the director informed the claimant he was now attending a disciplinary hearing. The claimant declined representation. The witness was of a mind to dismiss the claimant for gross misconduct but opted instead to issue him with a final written warning. When the claimant told him he intended to appeal that sanction the director then decided not to issue that warning as it was going to be appealed. In the event neither a warning nor an appeal took place in relation to this incident. The witness agreed that he acted as an investigator and as a disciplinarian in this case.

On 2 December the claimant complained to the managing director that he was the subject of bullying from the evening shift manager. He detailed that bullying in an email sent to another director who was based overseas. In reacting to that allegation the witness interviewed up to nine employees and could find no supporting evidence from them that bullying had occurred. The witness informed the claimant of his findings on 11 December. The claimant then invited the director to issue him with a final written warning, which the claimant would accept. The translator used at that meeting was the brother of the evening shift manager. In setting aside that offer the director paused for some days to consider the matter.

The group production director furnished a dismissal letter dated 16 December 2009 to the claimant. The dismissal was on the grounds of gross misconduct for refusing to carry out a lawful instruction and engaging in serious misconduct affecting the interests of the company. The claimant was also informed of his right to appeal that decision. The loss of production to the company was minor compared to the claimant's refusal to do his work as instructed. The witness said that the appeal process for that incident had become irrelevant when the second issue of bullying arose. During this four week period copies of statements and notes of meetings relevant to this case were not provided to the claimant.

### **Claimant's case**

On the 18<sup>th</sup> November 2009 the claimant reported for work early, as was his normal practice, because he liked to be updated by the day shift supervisor. The day shift supervisor told the claimant that he may have to work on two machines that evening. The claimant was OK with that as long as he would be assisted by a colleague. However, when the night shift supervisor came on duty he told the claimant to start up the other machine. At that time the claimant's colleague was engaged on another machine and could not leave it and therefore the claimant refused to start the other machine. The supervisor then told the claimant to "stop talking bullshit, and get on with the job". The claimant told the supervisor that he should have respect for him and the supervisor told the claimant to "fuck himself". This was not the first time that the supervisor had spoken to the claimant in this manner.

On the 30<sup>th</sup> November 2009 the claimant was given one hour notice of a disciplinary meeting with the manager. Also present at the meeting was the brother of the night shift manager, who acted as interpreter as the claimant has poor English. The manager told the claimant that he was going to issue him with a written warning in relation to his refusal to carry out the instructions of his supervisor. However, when the claimant said he would appeal such a warning the manager did not issue it.

On the 2<sup>nd</sup> December 2009 the claimant made a formal complaint of bullying against the night shift supervisor. On the 11<sup>th</sup> December 2009 the claimant was informed that his complaint had been

investigated and the company had found no grounds for that complaint. The claimant was not shown any statements taken during this investigation.

On the 16<sup>th</sup> December 2009 the claimant was given a letter of dismissal and was not told that he had the right to appeal.

### **Determination**

Having carefully considered the evidence adduced the Tribunal finds that the procedures adopted by the respondent were defective. By his own admission a director of the respondent carried out the investigation and also made the decision to dismiss the claimant. Furthermore the Tribunal were not satisfied that the claimant was given the right to appeal his dismissal.

On the other hand the tribunal finds that the claimant substantially contributed to his own dismissal. Accordingly, the Tribunal determines that the claimant was unfairly dismissed and in all the circumstances awards him €5,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal also awards the claimant €1,100.00 under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

