

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE – *claimant*

CASE NO.  
UD2028/2009  
MN1904/2009

against

EMPLOYER – *respondent*

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: Ms. B. Glynn

Members: Mr. P. Pierson  
Mr. T. J. Gill

heard this claim at Longford on 9<sup>th</sup> November 2009 and 12th November 2009 and 22<sup>nd</sup> February 2010.

Representation:

Claimant: Mr. Andrew King BL instructed by Mr. Johathan Cosgrove  
of Farrell Solicitors, 28 North Great George's Street, Dublin 1

Respondent: Ms. Kerry Molyneaux of IBEC,  
Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

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

The shift supervisor gave evidence. She has worked for the respondent for 20 years. She supervises employees in the aluminium packaging area. She makes sure that they are in and on time.

She had a good relationship with the claimant. He often approached her looking for overtime. There had been no issues before the incident. The shift supervisor did not tell the claimant that there was no more work for him in the plate freezing section.

On the day of the incident the shift supervisor in another section phoned her and said that he needed someone to come and work in his section. The shift supervisor asked

the claimant to go there and he went. Later she was told that someone would be needed to cover sick leave on the following day. She asked the claimant to cover. The claimant exploded. He was shouting and waving his hands in the air. The claimant's fists were clenched. She was frightened because she had not seen him react like that before.

The claimant walked off. The shift supervisor making an effort to appear calm went after him to try to sort it out. She had been shocked by his reaction to her offer of overtime. She did not leave the plant freezing section with the claimant.

The shift supervisor met the shift manager. She told him what had happened. She has always had a good relationship with the shift manager. She was concerned about working with the claimant again after his outburst. She did not complain about him in an effort to get him dismissed. The claimant did not apologise for his behaviour.

Later she went to the canteen. The claimant came in and sat staring at her. She felt very uncomfortable.

The shift supervisor had no recollection of an incident involving the claimant several years before the incident. Following the incident she was not suspended.

She made a statement about the incident to the operations manager.

The shift manager gave evidence. He has worked for the respondent since 1982.

On the day of the incident the shift supervisor came to him. She was very distressed and upset. She was on the verge of tears and was shaking. She had offered him overtime the following day. He had previously been offered overtime on the evening shift and the shift supervisor came and offered him the daytime shift instead. Most people would prefer to work overtime on the day shift. She offered him preferential hours.

The shift manager went looking for the claimant to hear his side of the incident. He asked the claimant to accompany him to the supervisor's office. The claimant was angry and seemed to be hyped up. The shift manager asked the claimant if he had used threatening behaviour to the shift supervisor. The claimant was loud and aggressive. The claimant told the shift manager that he was not fit to work in plate freezing. This was new information to the shift manager.

The claimant wanted to talk to the operations manager. The shift manager told the claimant that the operations manager was at a meeting with customers. The claimant went to speak to the operations manager. The claimant was told to go home and come back the following day for a meeting.

Later at about 2.00pm the shift manager met the claimant coming from the smoking shed. He told the claimant to leave the premises as he had been directed. The shift manager later told the operations manager about his encounter with the shift supervisor and then with the claimant. He had no further involvement in the matter.

The shift manager could not recall the claimant making a complaint about the shift

supervisor some years before the incident.

The operations manager gave evidence. The respondent has a grievance procedure and a disciplinary procedure. Both were agreed with SIPTU.

It is normal practice to suspend an employee pending an investigation. Most suspended employees return to work. Suspension does not automatically lead to dismissal. Employees would come to him with a serious grievance.

On the day of the incident he was showing a major customer around the plant. Securing this contract was of major importance. The operations manager was almost always happy to work things out with the claimant just not at that time.

He met briefly with the shift manager and the claimant. The shift manager was trying to explain what had happened. The claimant was visibly agitated. He was moving about quickly and was speaking incoherently. The operations manager wondered what had caused this. The operations manager did not have time to deal with the incident. Because of the state and behaviour of the claimant the operations manager thought it best to remove him pending an investigation.

The operations manager decided in the interests of objectivity not to ask the shift manager to investigate the incident. He felt that the person who should conduct the investigation was the engineering manager. There was a lot of emotion around the incident. He asked the shift supervisor to go home. He would meet her and the claimant the following day.

The following day the operations manager wanted to establish the facts. Had the claimant been treated unfairly in relation to movement? Why had he become explosive? He wanted to establish the facts and take statements from other to see if the incident had happened as it was reported. He also wanted the complaint to be made in writing.

The operations manager together with the engineering manager met the claimant accompanied by his wife the following day. The meeting got very heated. There was a lot of shouting. He wanted the claimant to give his version of the incident.

The operations manager wrote to the claimant on 17 June 2009 asking him to attend a second meeting on 22 June 2009. He enclosed a copy of the shift manager's complaint and the statement from the shift manager.

The operations manager had established certain facts and wanted the claimant to give his side. The meeting just went out of control. The claimant got extremely annoyed. The meeting was adjourned.

A disciplinary meeting was held on 27 July 2009. The operations manager had not made up his mind in advance. He wanted to review all the documents and hear what the claimant had to say. Afterwards he felt that he had everything he was going to get and a decision needed to be made. The decision to dismiss was made jointly with the engineering manager. The claimant was on a final written warning at the time of the incident and he had become very hostile. The claimant was dismissed for gross

misconduct.

The engineering manager gave evidence. He has a blend of roles combining looking after a sizeable plant and a full HR system.

The operations manager gave him an overview of the incident involving the claimant on 5<sup>th</sup> June 2009. The engineering manager had experience dealing with disciplinary investigations. He investigated the complaint with the operations manager. They met three times with the claimant and his representative and met 2 people from the freezing department. He took detailed notes of all the meetings.

The engineering manager found the claimant hostile and aggressive at meetings. The claimant shouted and waved his hands about and he spoke so fast that it was hard to understand him. The engineering manager notified security when meetings with the claimant were scheduled as a precaution in case the claimant's anger resulted in a physical outburst. On 25 June a meeting with the claimant was adjourned because he was laughing inappropriately.

Before the incident that led to the claimant's dismissal, the claimant was on a final written warning for aggressive behaviour. The engineering manager and the operations manager met the claimant to investigate the incident. On occasion during meetings the operations manager raised his voice. The engineering manager was satisfied that no aggression was directed at the claimant.

The engineering manager accepted the supervisor's version of the incident with the claimant. He did not accept the claimant's assertion that the supervisor decided to move him permanently to plate freezing. She did not have the authority to reassign a person permanently. The claimant's behaviour at meetings was such that the engineering manager believed he would have behaved aggressively towards other people.

The engineering manager took his time in making his decision. He made his decision on the 28 June after thinking seriously about it. The incident was not a once off event. This was a factor in the engineering manager's decision. Also the claimant did not apologise to the supervisor and neither did he show any remorse in words or gestures.

The engineering manager did not feel that a sanction other than dismissal was appropriate. After the incident happened the supervisor called the claimant back so that they could deal with it themselves. When she made a formal complaint the disciplinary process was appropriate and fair. The engineering manager did not bring the two parties together.

The engineering manager was not present at the incident therefore he had to investigate to establish what had happened. The supervisor was distressed something had happened to make her feel that way. She had felt threatened.

The respondent does not have a HR department. Payroll keeps the records. The engineering manager and the operations manager conducted the investigation and brought it through to disciplinary and made the decision to dismiss. The engineering manager felt it was fair for them to investigate and conclude the matter. The

investigation was thorough. The decision was summary dismissal for gross misconduct. The claimant's claim that he was bullied was just not credible as an explanation. The claimant was given the right to appeal.

### **Claimant's Case**

The claimant gave evidence. He worked for the respondent from 2004 to 2009. He was sick for part of 2009. Also in 2009 he was suspended from work for seven weeks. He was dismissed in July 2009.

The claimant liked his job. He was a hard worker and was often called on to work overtime. He liked to work overtime because he needed the money.

On 3<sup>rd</sup> June the claimant came to work as usual. On the roster board he saw that his shift had been changed. He went to the shift manager's office to ask why he would not be working on Wednesday. He should have been notified of a change to his shift. The shift manager told the claimant that he would be training on Wednesday. The claimant was moving to meat preparation and the systems had changed since he last worked there.

The claimant was working in the meat preparation area on the morning of 4<sup>th</sup> June 09. The shift manager asked him to go to the plant freezing section and work there. He went immediately. He got on well with the shift manager particularly as she often offered him overtime and he appreciated the extra money. At about midday she came to him and said 'go there'. The claimant was annoyed because he felt that he was being pushed around and he wanted to know why he was being moved from aluminium prep to plant freezing. He did not threaten her or argue with her. He did raise his voice to ask her why he was being moved for the third time. He felt that if the company was transferring him to plant freezing, he should have been told and not find out from reading the notice board.

The claimant decided to go and ask the operations manager why he was being pushed around. The claimant had a good relationship with the operations manager. The operations manager had said to him, 'I know you love your job. If you have a problem come and see me'. The claimant felt that the shift supervisor was pushing him around so he decided to speak to the operations manager. He did not threaten or fight with the shift supervisor. Neither did he notice that she was upset. The claimant told the shift supervisor that he was going to see the operations manager. When she called him back the claimant told her that he was going to see the operations manager.

The claimant was confused by the shift supervisor's reaction. He did not raise his fists while he spoke to her. She was not crying when he walked away. The claimant raised his hands to shoulder height while he was speaking to the shift supervisor but did not clench his fists or threaten her. Other people were working close by but did not intervene.

When the claimant went to the operations manager, the operations manager was meeting a new client and said that he would see the claimant when the meeting was finished. The claimant went outside and lit a cigarette. Then the production manager came and told him to put the cigarette out and come into the office. Inside, he told the

claimant to shut the door and asked him why he had been shouting at the shift supervisor. The claimant replied that nothing like that had happened. The production manager asked the claimant for a statement but the claimant was feeling unwell. The claimant was sweating, had a pain in his chest and could feel his heart beating. He had high blood pressure. The claimant told the production manager he would give his statement later.

The claimant did not feel that he would get a fair hearing from the production manager, who approached him aggressively and said we have a problem. It would have been more polite of the production manager to have asked him what the problem was. The production manager did not believe that the claimant had high blood pressure. The claimant was feeling weak. He went to the canteen and put his head down. Later when he raised his head he saw the shift supervisor.

When the new client had gone, the claimant and the production manager went to see the operations manager. The production manager had told the claimant to go home on suspension and to phone the following day to arrange a meeting with the operations manager. The claimant said he would wait. The operations manager came out of a meeting with a client and told the claimant to go home and to return at 10.00am the next morning for a meeting. The claimant was not in an agitated state, he disagreed with the operations manager's evidence on this.

At 10.00am the following morning the operations manager gave the claimant a letter of suspension that the production manager had prepared. The meeting went smoothly. The claimant explained why the shift supervisor had reacted as she did but they did not want to know. The claimant was told 'we do not want to go to the past.' The claimant asked for clear evidence against him but he was not given any papers. When he left the meeting the claimant was not laughing because this was something serious in his life. However the claimant was frustrated about not getting the statements.

On 27<sup>th</sup> July 2009 the claimant and his representative met with the engineering manager and the operations manager. The claimant submitted a letter asking for statements relating to the incident. In reply he was told that the engineering manager and the operations manager wanted to make their decision immediately. The claimant felt that the two managers did not believe him and that they had already made their decision.

The claimant told the Tribunal that he had been off work for 7 weeks in 2009 due to a stress related illness. He felt harassed by the shift supervisor. However he did not make a formal complaint so as not to jeopardise his career. The shift supervisor reported the claimant to management for every little thing.

The claimant did not appeal his dismissal because he felt that all the managers working for the respondent would think in the same way and it would be a waste of his time.

The claimant gave evidence of his efforts to mitigate his loss following his dismissal in July 2009.

## **Determination**

The Tribunal carefully considered all the evidence adduced. Something happened between the claimant and the shift supervisor and it was incumbent on the respondent to investigate and establish what happened and then to take appropriate action.

The Tribunal finds that the incident was not investigated in a fair and proper manner. It would have been better to suspend both individuals, pending investigation, not just the claimant. The claimant was treated differently from the shift supervisor.

There was no separation of process. The investigation and the disciplinary process were both conducted by the operations manager and the engineering manager. The Tribunal are satisfied that the shift supervisor told her version of the incident to the shift manager and he in turn told the operations manager. When he started investigating the operations manager was already biased by the shift supervisor's version of the incident.

The Tribunal finds that the claimant behaved badly but what he did does not amount to gross misconduct. The sanction imposed by the respondent in dismissing the claimant was disproportionate. Therefore the Tribunal finds that the claimant was unfairly dismissed. The claim under the Unfair Dismissals Acts 1977 to 2005 succeeds. The claimant is awarded the sum of €15,000.00.

No evidence was adduced on the claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 and the Tribunal makes to finding on this claim.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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