

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE – *claimant*

UD657/2010

MN612/2010

WT282/2010

against

EMPLOYER – *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr. E. Handley
Mr. G. Whyte

heard this claim in Dublin on 15th June and 1st December 2011, and 17th February 2012.

Representation:

Claimant: Ms Claire Bruton BL instructed by Mr. Neal Murphy, Murphys
Solicitors, Mount Clarence House, 91 Upper George's Street, Dun
Laoghaire, Co Dublin

Respondent(s): Mr. Tim O'Connell, IBEC, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

Preliminary issue 1

At the outset, an application to have the hearing held “in-camera” was made to the Tribunal on behalf of the respondent. An objection to the application was made by the claimant’s representative. The Tribunal decided that as there was no-one present not related to the case,

the hearing could proceed without the need for the “in-camera” status.

Preliminary issue 2

The respondent disputed the pay as per the T1A, which referred to the gross pay of the claimant as €704. The respondent stated that the gross pay was €677. It was decided that the pay issue would be dealt with at the resumed hearing, when the P60 would be opened to the Tribunal.

The Tribunal was informed of the new company name of the respondent.

The minimum notice aspect of the claim was not disputed by the respondent and a cheque was available on the first day of the hearing. It was agreed that the minimum notice would be withdrawn on the next day of hearing provided the cheque has been cleared.

Respondent’s case

Giving evidence, GK stated that he is Branch Manager of ATM operations. Approximately 500 machines are serviced nationally by the respondent company. A machine could be filled three to four times a week if it is in a busy location. The claimant worked with the ATM replenishment crew.

On 5th October, 2009 GK was present at the claimant’s disciplinary meeting. Letter dated 12th October, 2009 was opened to the Tribunal. The letter referred to the claimant’s disciplinary meeting. The meeting referred to a number of incidents which were brought to the claimant’s attention. GK stated that the first incident happened on 10th August when the claimant failed to secure cash at an ATM machine, where cash to the value of €18,000 was left in the bunker at the back of the machine in the cassette. The next replenishment crew found the cassette containing the cash on 31st August. GK stated that cash must be secured at all times. The claimant disputed that he left the money on site.

The reason for the delay in finding the cash was because the machine was located in the grounds of a college, which was closed during the summer months. There was no suggestion that the claimant was in any way dishonest, but the respondent is required to account for the cash, which they failed to do.

The next incident which was discussed at the disciplinary meeting related to a wrong load at another location, where €50 notes were loaded in a €20 cassette. GK stated that the claimant explained that he had been running late that day and was under pressure to have his lunch.

Letter dated 15th May 2008 was opened to the Tribunal. This letter referred to an incident where a remit bag was left behind on the floor of the bunker after the service had been carried out.

Letter dated 22nd January, 2009 was opened to the Tribunal, where reference was made to discussions relating to wrong loads on 27th September, 2008 and 3rd January, 2009. A final written warning was issued in the letter to the claimant.

GK had discussed with the claimant, the option of changing his role within the company but the claimant was not open to this idea and did not want a transfer. The claimant was offered

re-training but declined the offer as he felt he did not require more training.

In reply to the Tribunal, the witness stated that a warning lasts for nine months. The claimant did not appeal the final warning. The reason for the wrong loads was down to carelessness.

The third incident was another wrong load where €50 notes were loaded in a €20 euro cassette on 23rd September. Staff were aware of best practice when loading machines.

On 1st October a report was received that a crew were locked out of a bunker. The keys had been left inside the area. One employee went to the shop and the claimant went to use the toilet. There were several risks associated with this event and there was an opportunity to interfere with the safe. The other employee was disciplined. At the disciplinary meeting, the claimant stated that an error had been made on his behalf. The respondent would have been liable if something had happened.

Also at the disciplinary meeting, a complaint was discussed in relation to the National Control Centre complaining that two female members reported that they were abused over the phone by the claimant. The claimant had said that they abused him initially. The Manager from another location had also complained of abuse from the claimant. The claimant had stated that his diabetes was not a contributing factor, as he managed it well.

Under cross-examination, GK stated that the cassettes were always labelled and can be clearly identified. The witness confirmed that the claimant was not informed in writing of the meeting of 5th October, 2009. In relation to the college incident on 10th August, the claimant accepted that he loaded the machine. No other employees present were disciplined. The incident involving the €18,000 was not a loss to the bank.

It was put to the witness that the work load had increased from 10 up to 15 loads a day. GK stated that no specific number was agreed. Each employee received their break entitlements.

The witness stated that the claimant could have been transferred to the cash in-transit department. GK denied that it was the claimant pushing for the move.

It was put to the witness that two employees were denied training and that the claimant had received one day's training at commencement of employment. GK stated he could not verify this and denied that the claimant had frequently requested training.

Referring to the letter dated 22nd January, 2009, it was put to the witness that the letter did not state what "significant improvement" was expected of the claimant. GK stated that it was referred in the first two paragraphs of the letter.

When asked about the policies of the company, GK stated that every staff member received the company policies. The ATM procedures are not given to employees because of the sensitive nature of the contents but are available to employees. The procedures were outlined to the claimant. Explaining why this point was not referred to in the final letter to the claimant, GK said that the document was available to staff.

In reply to the Tribunal, GK stated that the claimant was trained and he personally witnessed the claimant carrying out servicing. The written warning was not appealed.

GK confirmed that other individuals in the bunker were not disciplined. One person is responsible for loading the money into the machine. GK denied that after the letter of January 2009, the claimant was placed with insufficiently trained staff. The witness confirmed that cash in transit staff are not trained in servicing as there is a technical element involved. GK never received a complaint from the claimant relating to the number of drops outside the Dublin area and denied that he wanted the claimant out of the company.

In relation to a number of personal injury proceedings, GK stated that he is not involved in disputes, which are more relevant to the HR department. He recalled the claimant's colleagues being held up and said that he would not have had the authority to withhold sick leave from the claimant in 2007. He did not re-call a post traumatic stress disorder on the part of the claimant due to an incident. GK stated that staff return to work from sick leave with medical approval and denied that the claimant frequently told him that he was under pressure.

In reply to the Tribunal, the claimant's representative stated that the post traumatic stress affected the claimant's concentration and this was not taken into account. The respondent stated that the personal injury claim should be dis-regarded.

Continuing with cross-examination, it was put to the witness that the bunkers were dark inside. GK stated that each cassette was clearly marked and the bunkers have lights inside them. He denied that memory blanks on the part of the claimant were discussed at the disciplinary meeting of 22nd January, 2009. GK did not know how many appeals had succeeded. He said it was clearly outlined to the claimant what was expected of him.

It was stated by the claimant's representative that at the disciplinary meeting in October, 2009 the claimant denied he was aggressive towards operatives.

He was also not given an opportunity to deal with the allegations put to him at the meeting in January, 2009. GK denied that was the case.

GK took on board, the explanations given by the claimant at the October, 2009 meeting and drafted investigation notes. When asked why these notes were not given to the claimant, he stated the claimant did not request them. GK denied being aggressive towards the claimant at the October, 2009 meeting. Explaining why the rules in relation to the ATM operations were not in the staff booklet, GK said that they were available in the office. He said the claimant would be in the office everyday at start and finish times.

When asked by the Tribunal the relevance of the booklet, the claimant's representative stated that the claimant was not aware of the practice and policies of the company. Referring to the training documents, the claimant's representative stated that none of the items refer to ATM replenishment. GK stated that it is the same job since 2001, most of the machines are 15-20 years old and that there is a training programme followed. The claimant was fully trained by the company in 2001.

In re-examination, GK stated that the claimant never mentioned post traumatic stress at the disciplinary meeting of 5th October, 2009. In relation to overtime, there is a staff sheet and staff make themselves available on a roster. GK was not sure how much overtime the claimant worked, given the large number of staff. He said that overtime was on a voluntary basis and that anyone suffering trauma would have difficulty working overtime.

In reply to the Tribunal, GK stated that the claimant had a good record up until 2008. When asked about the company procedure when staff returned from injury, GK stated that if HR had any reservations they would use the company doctor.

With regard to counselling, GK stated that a counselling session is provided by the Manager, which was GK himself. The claimant's final warning was classified as a suspension. He was not allowed to finish his notice as it was not considered safe. He was not paid notice due to an error.

GK confirmed that in some circumstances, the duties of ATM work and courier can be interchangeable. The claimant had confirmed that he was the ATM person who did the loading.

(MF) the Director of Operations and HR gave evidence. He joined the respondent in March 2003. The respondent provides a range of security services and has ten branches in Ireland reporting to him. He is made aware of issues as they arise by the managers of the branches. He became aware of the claimant's situation when he was issued with his final warning.

On the 15th October 2009, the claimant appealed the decision to dismiss him to the HR Department. In his letter of appeal the claimant mentioned four incidents. The first incident was when bags of cash were left in a bunker. The claimant asked why the bags were not noticed for 21 days. (MF) said people make mistakes and that different machines have different needs. As the machine was in a college it was not unusual for it to be unchanged for 21 days.

The second incident related to a wrong cassette being loaded into a machine. The claimant said he and a colleague had both loaded the machine and asked for a degree of understanding. (MF) said the crew fill out a job sheet for each service. They assign roles and complete the sheet themselves. One person drives, one is a courier and the other person is in the bunker. There are two people in the bunker when the machine is serviced. It was the claimant's job to take the cassette from the courier and load it into the machine.

The third incident was where €50 notes were loaded in a €20 euro cassette. MF said he could not explain why this was not noticed. It was a low volume machine, there was no explanation.

The fourth incident was when a bunker was left open and an engineer was left inside. If the engineer inside the bunker was attacked, it would be the responsibility of the respondent. Nobody should be left inside a bunker on their own.

There was a conflict of evidence in relation to the control staff incident and not much of that had a bearing on the outcome of the appeal.

(MF) said the claimant had done many correct ATM runs and demonstrated he was well able to do them properly.

A number of training records including induction, smoke box, manual handling, refresher, and new ATM replenishment procedures were opened to the Tribunal.

At the end of the appeal hearing, the claimant acknowledged he had made some errors and asked to be moved to other duties. (MF) said he would take time to reflect. On reflection he felt the number of mistakes warranted his dismissal.

Under cross-examination (MF) accepted he never worked on the ground. He did not see any of the claimant's letters, it was not his role.

He was aware the claimant had suffered a number of hold-ups but was not aware the company doctor had diagnosed Post Traumatic Stress syndrome. He said the staff have a stressful job and the respondent provides a twenty-four hour seven day a week service if they need any assistance.

He confirmed there was no requirement to have three ATM trained staff on one job. The driver of the vehicle needs a category C licence and the claimant did not have one.

Claimant's case

The claimant started working for the respondent in March 2001. He worked as a Cash in Transit Officer and then moved to the ATMs. Before he started in Dublin 8, he was given one days training and then sent out with different crews for on the job training. The claimant said he had never seen the ATM training appraisal form and could not say he had seen the ATM booklet. He did receive training on V Boxes and other safety features.

The claimant said the photograph opened to the Tribunal was rare. He said cassettes commonly had missing handles, the green flick switches were missing and the stickers showing the correct notes were also missing.

When an ATM is opened, a stacker system is inside. He would take the first box is out and put on top of the stacker if he was in a hurry. There was always better light at the stacker. The old €50 notes are taken out and given to the courier and the new €50 notes are put into the machine.

On the road, things were different and a replenishment could take from ten to forty minutes. The respondent would give them a job for 3pm and another job across the city at 3:15pm. The control centre would be on to the van asking where they were. He complained to the Union but was told that's how it is.

The claimant worked four shifts of eleven hours per week. However he normally worked thirteen hours per day.

In March 2004, he was the victim of a robbery. He can still hear the women screaming. After the robbery he was not nice to his family. He went to his GP and then to the respondents Councillor. The claimant was the victim of another robbery. He was assessed by the company doctor and was told he looked stressed and to contact his GP. He was out sick and had post-traumatic stress syndrome. After that he felt the company were bad to him.

Regarding the wrong loads, the claimant said he explained the mix up on the 21st January but was not sure about the 17th January. He took responsibility for the Castleknock problem on the 1st February.

The other problems he could not put down to one man. It was a collection of errors, wrong cash from the safe, wrong keys. The other staff were talked to, but were not disciplined.

He agreed to improve and asked for training. He did not hide his post-traumatic stress syndrome from anybody.

He didn't appeal the final warning because he was of the belief that it stayed as a final warning for three months, then went to a written warning for three months and then to a verbal warning for three months.

If anything happened on a run, the person loading the machine was responsible. He would gladly have taken a Cash in Transit job if offered.

Determination

Having considered all of the evidence the Tribunal finds that the respondent acted reasonably in all of the circumstances. There was a catalogue of incidents culminating in a final written warning in January 2009. The claimant did not appeal that warning which had a lifespan of nine months. This was confirmed by the claimant's own Union Representative and the Human Resource Director (MF). Following the issuing of the final written warning the claimant had a further four incidents where it appeared he lacked due care and attention in the performance of his duties. As a result of these the claimant was then dismissed.

Accordingly, the claims under the Unfair Dismissals Acts, 1977 to 2007, Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)