

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYER – *appellant*

CASE NO.
UD1532/2010

appeal of the recommendation of the Rights Commissioner in the case of:

EMPLOYEE – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. McGovern BL

Members: Mr C. Lucey
Mr S. O'Donnell

heard this claim at Dublin on 19th December 2011 and 1st March 2012

Representation:

Appellant: Mr. Tim O'Connell of IBEC,
Confederation House, 84/86 Lower Baggot Street, Dublin 2

Respondent: Ms Bernadette Thornton of SIPTU,
Liberty Hall, Dublin 1

This case came before the Tribunal by way of an employer appealing the recommendation of a Rights Commissioner (ref: r-079865-ud-09/JT) under the Unfair Dismissals Acts, 1977 to 2007.

The determination of the Tribunal was as follows:

Appellant's Case

The branch manager gave evidence. His role is to look after the operational function of the branch day to day. The business is the transport of cash and coins to banks and shops. There are considerable risks involved. Specialist vehicles and numerous procedures are used to deter criminals and to protect members of staff.

Cash for delivery is placed in sealed bags. The seal on each bag has a reference number that is listed on the receipt for the bag. The bags are loaded into a locker in the cargo area of the armoured

vehicle. The locker can only be opened on receipt of a code from HQ. A computer system prevents the locker from opening unless both crew members are in the vehicle. Each vehicle has 2 smoke boxes. A bag is carried across the pavement using a smoke box. The smoke box contains smoke and dye that will destroy the contents of the box in the event of a robbery. This procedure was designed to prevent duress robberies. In a duress robbery the crew member who is the courier is threatened or attacked on the pavement to compel the crew member in the vehicle to hand over cash. Use of this procedure means, that the crew member in the vehicle has no access to cash. Therefore he cannot hand it over if the other crew member is subject to duress.

All staff members, including the respondent were trained in this procedure.

On 23 September 2008 control became aware of an incident in Swords. The Gardaí were contacted and mobilised to the scene. When there is an incident it is the norm for the branch manager and the security liaison officer to attend the scene. They ensure the crew is ok and liaise with customers.

When the branch manager arrived on the scene the respondent had been taken to hospital by ambulance. A full counselling service is provided to crews after an incident. The appellant has a comprehensive injury on duty policy. The respondent could have taken up to 18 weeks off, subject to conditions.

The branch manager went to the respondent in the hospital. After an incident an employee is encouraged to return to his place of work. He fills in forms with his manager or supervisor to document the incident. This meeting acts as a debriefing for the employee. The branch manager asked the respondent's supervisor to explain the injury on duty policy to the respondent in English and his native language.

After an incident the branch manager looks at the nature of the incident and at any breaches of procedure. In this case procedure had been broken by both crew members. Bags of cash were left on the floor of the vehicle. When the crew member who is the courier leaves the vehicle all bags of cash should be in the locker or one of the 2 smoke boxes. The onus is on both crew members to ensure that no cash is exposed.

The branch manager had 3 meetings with the respondent in September 08. The first meeting was to find out how he was. There had been no contact with him, which was unusual. The branch manager is the point of contact. The claimant was advised of the requirement to submit medical certs.

At the disciplinary meeting the branch manager and the HR manager met with the respondent and his shop steward. Two issues were raised with the respondent. It was a breach of procedure to leave bags of cash on the floor of the vehicle. The respondent said that he did not realise that bags were on the floor. The branch manager explained that the onus to comply with procedures was on both crew members. The respondent was also failed to comply with the terms of the sick pay scheme.

The decision to dismiss the respondent was made by the branch manager. The decision was not made lightly. Staff members had been told that severe sanctions would be imposed if procedures were broken. The branch manager felt that it would not be possible to trust the respondent to comply with procedures in future.

After the incident the respondent did not make any contact with the appellant until they stopped paying him. They tried to contact him using his mobile phone and by letter.

The respondent was not given a copy of the procedures for delivering cash. It was the appellant company's policy not to issue security sensitive documents to employees in case the document was passed on to third parties. The HR manager gave evidence. After an incident she would get an employee to contact a counsellor. She would see people when they brought in their Social Welfare cheques. The respondent phoned the branch manager after 3 days. Normally a person would stay in contact but the respondent did not. She wrote to the respondent but to the wrong address. He did not answer his phone.

At the disciplinary meeting the respondent said that he was not aware of the bags on the floor of the vehicle. The HR manager thought that was not a reasonable explanation. The respondent said that he was not aware of the procedure in relation to medical certificates. However he told her that he was entitled to 18 weeks off work following an incident.

The operations manager gave evidence. The procedures used to deliver cash are crucial. The business is highly regulated.

From 2006 to the middle of 2008 duress attacks increased. By the middle of 2008 there were 3 such attacks a month, which resulted in a significant increase in costs for the appellant. To counter this, new procedures were put in place to ensure that the cash was secured and there was nothing to pass out from the van. A PR consultant was engaged to oversee the media campaign and to get the message out. The managing director addressed all staff and made it clear to employees that dismissal would result if the procedure was not followed. A bag of cash, on removal from the locker, was to be put into a smoke box. When the courier was on the pavement the staff member remaining on the vehicle would have no access to cash. No cash was to be left out of the locker unattended.

The operations manager heard the respondent's appeal of the decision to dismiss him. The branch manager attended the appeal and outlined the reasons for the decision to dismiss. The respondent and his representative also attended and neither objected to the presence of the branch manager. The operations manager had no part in the investigation or in the decision to dismiss the respondent and so was an independent person.

At the appeal the respondent contended that he had not seen bags of cash on the floor of the vehicle before he got out. The respondent believed that his colleague had concealed the bags on the floor. The operations manager did not accept this explanation. The area inside the vehicle is small, even cramped. All cash should have been secure before the respondent left the vehicle.

On the day of the incident in question the respondent was attacked on the pavement when he left the vehicle and shots were fired. The respondent's colleague handed out the unsecured bags from the floor of the vehicle. The respondent pointed out that he had not handed out the money, his colleague had done that. There were 10 bags for delivery to that customer. The bags were removed from the locker to record the barcode numbers. The respondent's colleague removed the bags and the respondent recorded the numbers. All but two of the bags should have been returned to the locker. The remaining 2 bags should have been put into the smoke boxes. Following the delivery of the first 2 bags, the respondent would get back into the vehicle and then the code to again open the locker would be obtained from HQ and 2 further cash bags would be removed from the locker. These would be delivered and the process would continue.

Both members of the crew are responsible for securing the cash. The successful robbery

undermined the media campaign and undermined the use of the procedures. However there were no further robberies after this incident.

After the incident the branch manager explained the procedures relating to sick leave to the respondent. However the respondent absented himself for several weeks. When he did make contact he said he was entitled to 18 weeks off and he would take the 18 weeks. He did not send in sick certificates and neither did he make contact with the appellant. They were worried about his well-being.

The supervisor gave evidence. He met the respondent after the incident. When the respondent was discharged from hospital the branch manager brought him back to the depot. At that time the respondent was in some pain and was a bit stressed. The supervisor told the respondent about his own experiences about a violent attack.

The supervisor filled in the incident report with him. The supervisor explained the sick leave procedure to the respondent in English and his native language and asked the respondent if he understood. The respondent said ok. The supervisor told the respondent to phone him if he had any questions. The respondent did not contact the supervisor.

Respondent's Case

The respondent's shop steward gave evidence. He was advised of the investigation, but he only accompanied the respondent to the disciplinary meeting. The respondent said that he was not responsible for the bags in and bags out on the day of the incident. He was not the driver that day.

The respondent's shop steward did not know if the respondent knew in advance of the appeal that everyone involved would be present. This is the normal way appeals are handled by the appellant.

The respondent gave evidence. On the day of the incident he came to work late. He worked a lot of overtime and was tired. It was up to the crew members to decide who drove on a day to day basis. He sat in the passenger seat of the vehicle and slept for a portion of the journey. He had received some training on the new procedure. They visited other customers before arriving at the bank. They got the code from the control room to open the locker. The respondent's colleague opened the locker and took out bags. He called out the number of each bag to the respondent who, while remaining in the passenger seat, wrote down the numbers. The respondent's colleague put a bag in each of the two smoke boxes. The respondent thought that his colleague put the other bags back in the locker. The respondent would not have left the van if he had seen bags.

The respondent left the van and went to the back to take a smoke box from his colleague. A man ran at him with a sawn off shotgun. The respondent was struck on the head by the assailant and lost consciousness. An ambulance took him to hospital. The branch manager brought the respondent back to the branch when he was discharged from hospital.

The respondent met with the supervisor. The supervisor told the respondent about his own experiences with violent attacks at work. The respondent asked the supervisor to continue with the documents as he did not feel well. The supervisor did not mention Social Welfare to him. After 3 days the respondent phoned the branch manager who told him to come back when he was in good condition.

The respondent did not get the letter from HR manager because it had the wrong address. When his

sick pay stopped he went to see the HR manager. She told him he needed to bring in his Social Welfare cheques. He was sent to the appellant's doctor. When he was due to go back he was suspended. He thought it likely he got a letter informing him of the suspension.

About a week after the incident the Gardaí interviewed him about a separate matter and took his phone. The respondent bought a new phone but did not inform the appellant of his new number. He did pass his new number on to some of his friends at work.

The respondent established his loss for the Tribunal.

Determination

The Tribunal carefully considered the evidence adduced. The Tribunal accepts that the cash handling procedure was introduced by the appellant to counter a series of events that threatened both the security of the cargo and the safety of staff members. Evidence was given that the respondent received training in the cash handling procedure and it was accepted that he understood the procedure in question.

The Tribunal accepts the evidence setting out the reasons that led to the introduction of the cash handling procedures. These new procedures were accompanied by a nationwide campaign indicating that there was no access to cash by staff in order to deter potential attackers. The Tribunal also accepts the evidence of the operations director that all staff were made aware that any breach in these new procedures could result in dismissal.

The Tribunal is satisfied that the respondent was in breach of the cash handling procedure. The Tribunal finds that the dismissal of the respondent was not unfair given the seriousness of the matters at hand and the fact that it was well communicated to staff that dismissal was a potential sanction for any breaches in the cash handling procedure. The Tribunal accepts the evidence of the appellant that it was the equal responsibility of both members of staff on the van to ensure that the cash was adequately secured. In the circumstances, the Tribunal does not comment on the question of whether the respondent was in breach of the appellant's sick leave procedure in arriving at a determination. The appeal under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the recommendation of the Rights Commissioner is upset.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)