

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.
UD2466/2009
MN2305/2009

EMPLOYEE -*claimant*

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 N. O'Carroll-Kelly BL

Members: Mr M. Noone
 Mr. J. Dorney

heard this claim at Naas on 2nd February 2011
 and 13th July 2011
 and 20th October 2011

Representation:

Claimant: Mr James O'Neill, Newbridge Citizens
Information Centre, Parish Centre, Newbridge,
Co. Kildare

Respondent: Mr. David Farrell, Ir/Hr Executive,
Ibec, Confederation House, 84/86 Lower Baggot
Street, Dublin 2

Background:

The respondent company is a haulage company. The claimant worked as a warehouse supervisor for the respondent. An expensive piece of equipment was damaged and the matter was investigated by the respondent.

Respondent's case:

The Tribunal heard evidence from the divisional director of the European division of the respondent company. He was appointed to an investigation into the incident regarding the claimant as he would have an independent view of the matter. It was he who investigated the matter. The claimant was invited to an interview regarding a transformer that had been damaged. The witness gave evidence as to the interview and as to the method of unloading the trailers of the lorries. He also explained the balance of gravity of the transformer units and

length of the units. This had all been put to the claimant at the meeting. He had also asked the claimant about the method used to offload the unit and asked the claimant about the oil leak that emanated from the unit. When the claimant was told that they had viewed photos and CCTV footage, the claimant said that while it looked like he was at fault he was not.

The witness was asked if he thought that the claimant was attempting to cover up the matter and he explained that if it had been he who was in the situation he would have been very very factual if he believed that he was not guilty and he would state clearly what he had done and why he had done it. There were so many inconsistencies in what the claimant told them, the claimant left matters vague. The bond of trust had been broken. The witness explained, "Everyone makes mistakes, if he had said from the beginning it would be likely a different outcome", "we just cannot have employees that we cannot trust". The claimant was a supervisor and had a group of people that worked under him; he was their "Eyes and ears" and they had to rely on their supervisors.

In cross-examination it was put to the witness that he offered the claimant an opportunity to re-write his notes (the claimant wrote a report of the incident). The witness explained that he felt that they were not being told the truth and that honesty is the best policy that is why he gave him the opportunity to re-write his notes, he felt that they were not being told the truth.

The witness was asked if the claimant would have been disciplined if he left the units on the trailer to be removed the next day he explained that he would not as he would have made a decision not to lift the units.

The Tribunal heard evidence from the person who heard the claimant's appeal of his dismissal. He is a Managing Director of a separate company in the group. He explained that he had no involvement in the claimant's work.

He read the full file about the matter. He equally sought to get the claimants recollection of the events. He "teased out" with the claimant as to if they had adequate equipment on site. The claimant did not give information as to if straps were thrown over the unit to unload it. The basic operational procedures were not adhered to. All of the ingredients were there to perform the task in the usual way. He tried to see if he had missed something to see for example if there was a dire emergency that required the units to be taken out of the trailer (In that manner). They spent most of the time talking about what had happened that night, they did not use the claimants statement as a "misconduct statement" the statement was just for facts. The company gave information to the claimant and he did not see any shortcomings there. The claimant did have a clear disciplinary record up to that point.

There were two points, one of which was how the unloading was handled and it clearly was not handled correctly and there could have been a fatality. This was a serious matter and the company took health and safety very seriously. The supervisor role is an important role and they are highly trained. The second point was the statement of the claimant which was incomplete and did not give all of the information. He felt that the statement was insufficient. Therefore the operation was not correct and the statement was correct. Therefore this led him to believe he should uphold the dismissal. He explained that he "dealt with the statement and what was in front of me, I looked at what was important to the company and staff welfare and the customers". The grounds of the appeal and the company procedures were adhered to one hundred per cent.

In cross-examination the witness explained that if heavy lifting equipment is needed then the load is left overnight and they get the heavy lifting equipment the next morning. The employees have health and safety training and the employees know what equipment cannot be lifted.. “It is crystal clear what the lifting limits are”.

In answer to questions by the Tribunal the witness explained that the transformers could cost from €10K to €20K to €30K and that the transformer/s in question could not be repaired.

Claimant’s case:

The Tribunal heard evidence from the claimant. He explained that he got a manifest from the desk to unload the trailer. He went to the units and noticed an oil spill and that two units had been damaged. He took photos of the spill and the units. He had to unload the truck as it was going to Spain the next day. He cleaned up the oil spill. The unit was 3.5 tonnes and 3 tonne was the safe work load. It was normal to work above the safe load; all supervisors were aware of this. This was on 23rd May. Nothing was discussed until 30th May when he got a phone call and he was asked to write a note about the incident. He was not in work that day and he offered to call in to the office and he was told that it was ok to write the note the next day.

The next day he wrote the note and left it into the relevant area. Ten minutes another supervisor told him that MD (a manager / director) wanted to speak to him. He met MD and MD gave him a letter inviting him to a meeting and this meeting was to take place at this time i.e. he had just arrived and the meeting was to commence. There was a reference to damage to a shipment and that the customer was unhappy with the respondent. The claimant was told that he was being suspended and not to contact his work colleagues. The letter that he had been handed told him that he could have brought someone to the meeting but he had already arrived to the meeting and was handed the letter at the meeting.

He attended the next meeting and brought a representative. He was not shown CCTV footage. At the meeting he was accused of being vague but he told them that he had given them his statement.

The claimant explained that in the warehouse they receive the manifests and on them it said the weights were 3.5 tonnes. They do not have a forklift for 3.5 tonnes; the forklift lifts 3 tonnes. He explained that the safest way to take the unit from the trailer was through the back door. And so he decided to do so. He would have left the unit in the trailer but he was under pressure. If he had left the unit in the trailer he would have go a “serious rollicking” as three shipments would not have made the boat.

He explained that the units are weak near the bottom so he put a strap near the top of the unit. He put “banding” around the unit to stop it falling. The claimant explained the floor heights and pros and cons of lifting the unit from the side or the rear etc. to the Tribunal. He explained, “I think that the damage was caused by the straps as well”. The claimant was asked about the straps, he explained “Whichever straps were used to tie the unit down, possibly the haulier, not my straps because the damage was already done before my straps were on”. He strapped the units at the top because that was where the stronger metal was.

He took the first unit off the trailer with no problem. The second unit would not come off because of a lip in the ramp so he had to push it back and remove it from the side. He felt that he was acting in a safe manner. He was trying to protect the company. Nobody else was in the vicinity where he was working.

The claimant agreed that the goods were damaged. The photos that he took were taken before the units were removed from the trailer. The photos were taken with the “curtains” closed and with the “curtains” open and this was to show the damage. He took the photos before he removed the units from the trailer and the curtains were closed at first. He had noticed that the trailer floor was wet; there was a slow leak (on the unit) which had continued for several days afterwards. The leak was a slow trickle but when he lifted the unit from the floor it became a fast leak. When he placed the unit back to the ground it slowed again.

He was asked to write a short note as to what had happened. In hindsight he would have written everything down. He explained that he could not properly see the straps on the CCTV because he was slightly colour blind.

He attended a disciplinary hearing. He was not given a copy of the notes of the hearing.

The claimant was asked about the meeting notes and some of the things that the notes reflected what he had said at the meeting. He was asked if he said that he made some wrong decisions at the meeting and he explained that he was being badgered and the CCTV looked like it could be interpreted a certain way. The claimant told the Tribunal “I felt like I was being badgered into changing my story and it wasn’t a story”.

In cross-examination the claimant agreed that he attempted to drag the units out on the night in question, but he disagreed that it was not normal practice to do so. He agreed that as a supervisor on the night in question he was responsible for health and safety. He agreed that it was common sense to leave the units on the trailer to be unloaded by obtaining heavy lifting equipment the next day.

Determination:

There were inconsistencies in the claimant’s evidence. The Tribunal prefer the Respondent’s evidence.

The claimant during the entire investigation process and the Employment Appeals Tribunal hearing refused to accept responsibility for the damage despite the overwhelming evidence to the contrary.

The claim under the Unfair Dismissals Acts 1977 to 2007, fails.

The claimant was not summarily dismissed and the he was not paid notice, accordingly, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 succeeds and the Tribunal awards the claimant the sum of €1,599.70, this being two weeks’ pay as compensation in lieu of notice.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

