

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYER
- *Appellant*

CASE NO.

UD1955/2011

against 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. P. Wallace
Members: Mr G. Andrews
Ms S. Kelly

heard this appeal at Limerick on 2nd April 2012

Representation:

Appellant(s) : Purdy Fitzgerald, Solicitors, Kiltartan House, Forster Street, Galway

Respondent(s) : Bernard P Cunnane & Co, Solicitors, Aras Ide, Foynes, Co Limerick

This case came before the Tribunal by way of an employer appeal of a Rights Commissioner recommendation under the Unfair Dismissals Acts, 1997 to 2007 Ref R-106632-UD-11/MH

Determination

Operations Director PF gave evidence of having responsibility for all employees and customers and reporting directly to the MD. He told the Tribunal that the respondent employee worked well in the company up until February 2011. The respondent delivered oil to a new customer and failed to get the bill of lading signed at the time of delivery. This in effect meant that 35,000 Litres of oil was delivered and no proof of the delivery was recorded therefore it would not be possible to invoice the customer and the company potentially could be at financial loss.

As part of the training programme employees are told the importance of getting the bill of lading signed and the importance of having this documentation is covered extensively. The employee had three year's experience and should not have made this error. PF told the Tribunal

that he was very concerned about how a new customer would view this error and also concerned about the potential cost to the company. He accepted that the customer faxed a signed copy of the bill of lading to the company within a few hours but stated that the customer at a later date sought a reduction in the cost to make up for the incident.

On the 3 February 2011 he met with the employee explaining the seriousness of the incident. A letter to the employee following up on that meeting was read into evidence. The letter set out that the employee was suspended pending an investigation. A further meeting was arranged for the 14 February 2011 where the employee was informed that he could commence work from that date. At that meeting the employee was told he would have to make immediate improvements in relation to his attention to detail and his work would be closely monitored. A letter followed dated 14 February 2011 advising him that this was a final warning.

The employee was assigned work on the 15 February which involved a delivery to a customer in Cahir. PF received a call from EC who was left in charge that day saying that LC had delivered to the wrong customer. A meeting with LC was held on the 17 February 2011 where he apologised for the error and could not explain what happened. PF met with LC again on the 21 February 2011 outlining the company's dissatisfaction and that his conduct was considered gross misconduct. PF dismissed LC at that meeting.

PF accepted that he breached the company procedure when he suspended the employee without pay in relation to the first incident concerning his failure to get the bill of lading signed by the customer. He further accepted that fellow directors were not happy with this breach in company procedure. PF told the Tribunal that the company had suffered financial loss as a result of LC's behaviour in that he had to offer a discount to the customer however he had no supporting documentation for the Tribunal. He said he had to keep customers happy and at the time was concerned as the bill of lading involved a new customer. He confirmed he had not lost the customer following the incident.

The respondent (LC) told the Tribunal that on the day that he had not got the bill of lading signed, the customer had taken the documentation away to photocopy and he had assumed that it was signed. Once he was made aware of this in order to resolve the matter he contacted the customer SC who immediately faxed a signed copy of the bill of lading to the employers office. Following this he was suspended without pay until the 14 February when he was allowed return to work. On that day he told the Tribunal he worked approximately 11 hours with deliveries made to Foxford, County Mayo. He had received a phone call on his return journey that day advising him he would be delivering to Cahir the following day. He returned home at 9pm and the following day the 15 February was back at the depot around 5.30am. The employer company had two customers in Cahir who he delivered to and having commenced discharging black oil realised he was delivering to the wrong customer. He told the Tribunal that he stopped the process and delivered the remaining oil to the correct customer who was located within close proximity. At a meeting with PF later that day he was told that the company were unhappy and was dismissed. He said that the suspension had left him stressed, worried and he was devastated which was the reason for not appealing his dismissal. He had no confidence in

any appeal at that stage. LC accepted that not getting the bill of lading signed was serious. On the day he was aware that this was a new customer and he took particular care with the physical task of delivery.

The Tribunal carefully considered the evidence adduced by both parties. The Tribunal accepts that the respondents (employee) failure to have the bill of lading signed was a serious error on his part but also notes that he instantly accepted responsibility for this oversight and sought to have the matter rectified immediately when it came to his attention. The employee took full responsibility for the error and the Tribunal is satisfied that the respondent's reaction in issuing a final warning was disproportionate. In this regard the Tribunal notes the appellant's (employers) own evidence that they breached their own procedures in suspending the respondent without pay following this incident.

The Tribunal is not satisfied that there was any financial loss to the company in relation to the two incidents as no supporting documentation was produced in that regard to the Tribunal. The Tribunal furthermore is satisfied that the employer did not incur any financial loss of business as a result of the employee's actions.

In all the circumstances the Tribunal finds that the employee was unfairly dismissed and upholds the decision of the Rights Commissioner in full.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)