

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NOS.

EMPLOYEE – *claimant*

UD2442/2010
RP3281/2010

against

EMPLOYER – *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Lucey

Members: Mr D. Hegarty
Mr O. Wills

heard this claim at Cork on 23rd April 2012

Representation:

Claimant: Ms Ruth Heavey BL instructed by Patrick O'Shea & Co. Solicitors,
77 Main Street, Midleton, Co. Cork

Respondent: Ms Elizabeth Skelly BL instructed by Eoin Murphy Solicitors,
First Floor, Watersedge, Midleton, Co. Cork

The determination of the Tribunal is as follows:

The claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn.

Respondent's Case

The managing director gave evidence. He was one of the founders of the company when it was set up in y. The respondent company provides a remote monitoring service for intruder alarms and elderly alarms. They also provide remote monitoring using CCTV. The respondent employs 16 people, the same number as when the claimant was dismissed.

The claimant received alarm calls and contacted the relevant people. He monitored 2 or 3 screens. The claimant was there from the start. At the start the claimant was a keen worker. As time went on the business grew and there were a number of incidents involving the claimant. The most serious incident was when the claimant mishandled an alarm call in July 2008 and as a result the respondent lost that contract. The managing director preferred to handle issues by putting the mistake right. He explained the procedures to the claimant and issued him with a written warning.

The claimant complained of being bullied whenever he was reprimanded. The managing director was aware that the claimant had been bullied as a child. The managing director said that he had dealt very fairly with the claimant by giving him extra help when he needed it.

On 21st May 2010 the operations manager reported to the managing director that the claimant had been accessing adult sites during working hours and using the respondent's computer system. Employees are not allowed to access the internet because of the risk to the system of a virus. A virus could shut down their computer with very serious results as the business is computer based. Adult sites are particularly susceptible to carrying viruses. The claimant was suspended for 2 weeks on full pay. He knew the issue was a serious one.

The managing director engaged a computer consultant to check the system. The report showed that on numerous occasions adult sites were accessed when the claimant was at work and logged on to the system. The managing director with the operations manager and the HR officer met the claimant accompanied by his brother on 3rd June 2010. The claimant did not deny accessing adult sites. The claimant would have known that this was not allowed because in the early days of the business an employee resigned before the disciplinary process was started for the same actions. The claimant was dismissed. The claimant unsuccessfully appealed the decision to dismiss him.

The investor gave evidence. He looks after the finance by overseeing the monthly figures and monitoring growth. He has no involvement with the day to day running of the business. The claimant phoned the shareholder's office to appeal the decision to dismiss him. The investor met the claimant on 10th June to hear his appeal. The claimant did not bring anyone with him but he spoke for most of the meeting. The claimant maintained that he was driven to access adult sites by bullying by the managing director. The investor did not accept this explanation because he knows the managing director is very good with staff and is if anything too soft with them.

The investor upheld the decision to dismiss. The business receives 300 alarm calls a week without the computer there would be a serious difficulty. Also it was the claimant's job to monitor while he was at work and he was not paid to access the net.

Claimant's Case

The claimant gave evidence. His role was to monitor alarms and CCTV. He also made cold calls to sell intruder alarm systems. His focus was to be pushed up the ladder.

When he was called to a disciplinary meeting he was aware that his job was in jeopardy. He had been told verbally. He had hoped the issue could be sorted out. The claimant fully admitted what had happened. He had known about the code of conduct even though it was not in writing.

After the claimant received his letter of termination he phoned the investor and went to his office. He told the investor that bullying was affecting his health. He had been unable to sleep. The investor washed his hands of him.

The claimant established loss for the Tribunal.

Determination

The Tribunal carefully considered the evidence adduced. The claimant was aware of the seriousness of the matter and that his actions posed a risk to the respondent's business. He also accepted that he was aware of the unwritten code of conduct. The Tribunal finds that the claimant's dismissal was not unfair. The claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

