

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE

- *claimant*

CASE NO.

UD1669/2010

against

- EMPLOYER

- respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr P. Pierce
Mr C. Ryan

heard this claim at Dublin on 5th January 2012

Representation:

Claimant: Mr. Paul Henry, Siptu, Membership Information & Support, Liberty Hall, Dublin 1

Respondent: Ms Marie Durcan, Private Consultant, Old Melifont Road, Beggan, Drogheda,
Co.Louth
Eirinn McKiernan & Co, Solicitors, 11 Ashe Street, Cavan

The determination of the Tribunal was as follows:

The former HR manager explained that the claimant was dismissed for failure to provide documentary evidence that he had brought his child to hospital on a day he was absent from work. This resulted in the claimant being absent from work for two to three days. It was company policy that employees provide documentation if you were absent from work. During the course of the hearing it was established that the date the claimant brought his child to hospital was the Friday 23rd April 2010. The respondent maintained that the claimant was due in to work on Saturday 24th and Sunday 25th April and had failed to report to work on these days. However the claimant maintained he had contacted his immediate supervisor to inform him of situation on the Friday and further that he was not rostered to work that weekend. The respondent did not have the work rota of that week at the hearing. The claimant reported back to work on Monday 26th April 2010.

The HR manager approached the claimant about this absence when she was informed about it on

the 5th May 2010 and requested that he provide documentary evidence that his child was in hospital on the days in question. She referred the claimant to the company handbook. The claimant reverted back to her and informed her that he couldn't bring in this documentation. The HR manager suggested that he obtain a letter from his GP who had referred the child to hospital, the claimant in evidence could not recall this. The HR manager recalled at various times she requested this documentation from the claimant, verbally and wrote to the claimant requesting same on the 10th May 2010 and 19th May 2010. Both of these letters state that failure to comply with this request would result in disciplinary action. The claimant was absent on sick leave since 7th May 2010.

On the 11th May 2010 the claimant's union representative wrote to the respondent requesting a meeting with the company to discuss four issues.

1. The claimant would no longer perform the role of a truck driver but that of a general operative
2. The claimant "allegedly" dumping personal waste on the company facilities
3. The issue surrounding the documentation in respect of his child's hospitalisation
4. An unauthorised deduction from his wages.

The HR manager acknowledged this letter stating that they were investigating the issues raised. The HR manager did not engage with the union as the claimant never instructed her to do so. The claimant had received a final written warning on the 7th May 2010 in relation to personal rubbish found on the respondent's site; this was not considered when dismissing the claimant. The claimant stated that he never saw or received this final warning and on the date it issued he was out sick. The HR manager in her evidence confirmed to the Tribunal that the claimant was dismissed for the breach of not providing documentation in respect of his absence. He had previously received a verbal warning in relation to absenteeism.

The HR manager reported the situation to the CEO. Management decided because the claimant would not comply with the company's request and provide documentation, to terminate the claimant's position. On the 4th June 2010 a letter issued to the claimant stating "that due to your noncompliance with the company's instructions, you have left us with no other option but to terminate your employment". The claimant exercised his right to appeal the decision to terminate his employment as per the respondent's handbook. This appeal was carried out by the financial controller, the claimant, his union representative and the HR manager was present. The financial controller upheld the decisions to terminate his employment.

In reply to questions from the Tribunal as to why the respondent had not followed their own procedures as per their handbook and issue the claimant with a written warning for not providing documentation. The HR manager explained that they felt he was not complying as she believes he was not at the hospital, and not producing this documentation amounted to gross misconduct. She did not meet with the union as she was guarding the claimant's confidentiality. She further explained while the respondent allows employees to be represented the claimant never informed her formally that his union was representing him.

The claimant explained that he went out sick on the 7th May 2010 and did not return to work as he was dismissed. He gave evidence of loss.

Determination

The Tribunal carefully considered the evidence adduced and the documentation produced at the hearing. The respondent had a comprehensive procedure in relation to disciplinary matters. The respondent failed to follow its own procedures and failed to give a satisfactory explanation for that failure. The dismissal letter of the 4th June 2010 was completely premature. Taking all of the facts into consideration, the failure to follow its own procedures was a fatal flaw.

The claimant did contribute to his own demise when he failed to produce the documentation the respondent requested. That has been taken into account when awarding the claimant the sum of €7,500.00 under the Unfair Dismissals Acts 1977 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)