

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE(*claimant*)

CASE NO.
UD686/2010

Against

EMPLOYER(*respondent*)

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms J. McGovern B.L.

Members: Mr N. Ormond
Ms N. Greene

heard this claim at Dublin on 12th July 2011 and 9th December 2011

Representation:

Claimant:

Mr. Christopher Horrigan, Blake Horrigan, Solicitors,
McKeever House, 4/5 Ushers Court, Ushers Quay, Dublin 8

Respondent:

Mr. Paul Dunne, IBEC, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

Respondent's Case

The site manager gave evidence. She was responsible for the contract on site and she ensured that the client got value for money. The claimant was a cleaning operative who reported to a supervisor. The claimant's job was to empty all the bins and put a fresh bag into each bin. Her job did not change. The claimant worked a 4 hour shift without a scheduled break.

Early on the claimant's performance was good. There was a point when all the bins were emptied. Then she would put her hand into the bins and put the stuff into another bag. This was not allowed because it was faster to whip out the bag and put in a fresh one. Other cleaning operatives had to stay back without pay and complete the claimant's work.

The claimant was given a written warning because she had not emptied all the bins. The client complains when the job is not done. The claimant did not appeal the warning.

There were other difficulties with the claimant. She was wasting time and taking unscheduled breaks. Also she was found by her supervisor in an office or conference room with the lights off and this is contrary to health and safety rules. When she was offered other scheduled shifts the claimant always declined.

The site manager was always concerned that the work be done on schedule and as per contract. She spoke to the claimant about this.

The supervisor tried to resolve the issue informally. The claimant raised a grievance against her supervisor. There was a meeting with the claimant and her representative and the issues were discussed. The site manager wrote to the claimant seeking a marked improvement in her work performance.

On 1st December 2009 the site manager issued the claimant with a final written warning because she had she had taken unscheduled breaks and also because she had eaten food that the client had supplied for a meeting. The claimant did not appeal the final written warning.

In January 2010 the client complained that fresh bags were not being put in the bins. The site manager wrote to the claimant asking her to attend a meeting. The claimant was unable to attend. She was suspended with pay pending a meeting.

A disciplinary meeting was held on 21st January 2010. The claimant did not dispute the claims. She felt that she had too many bins to empty. The site manager was at the end of her tether. The client was complaining of unfinished work. The claimant would not follow instructions and would not accept another role. In consultation with the HR partner, the site manager made the decision to dismiss the claimant.

The site manager felt that 4 hours was enough time to empty the bins. The claimant's replacement could do the job in about two and a half hours.

The HR partner gave evidence. At the disciplinary meeting the claimant had not mentioned any mitigating circumstances. The decision to dismiss was made by her in consultation with the site manager. No other sanction was considered. They had been through so many steps and the claimant had shown no improvement. The site manager had discussed other roles with the claimant. The claimant had been given every opportunity to improve.

The claimant did not appeal the decision to dismiss her.

On the second day of hearing, the claimant's supervisor at the time stated that there were problems with the claimants work from the start of 2009. The claimant was not following instructions and complaints were received about her work. On 17th February 2009 a meeting was held with the claimant to discuss concerns about her poor work performance. A two week period was given for improvement. The claimant was assigned another staff member for a two week period. This employee was not assisting on a daily basis as he was also covering staff holidays.

The witness told the Tribunal that the claimant was performing the same duties as with the previous company. There had been no concerns highlighted by the claimant.

After an e-mail of complaint on 8th July 2009, the witness said she had to speak to the claimant about the bags not being emptied from bins, being late, not following instructions and taking breaks when others were working. The supervisor tried to resolve the issues with the claimant.

The letter from the respondent to the claimant dated 30th October, 2009 was opened to the Tribunal relating to a written warning to the claimant. This letter was not appealed.

A final written warning was issued to the claimant on 1st December 2009. On 14th January 2010 a complaint from a customer was received in relation to the bags not being changed from bins. The claimant told the supervisor that she thought she had changed all the bags. The supervisor confirmed that the claimant had been fully trained. The claimant refused the offer of other work within the company.

Under cross-examination, the supervisor denied that she did not get on with the claimant. She confirmed that the claimant had said she was doing her best. The 24th September 2009 was the first time the supervisor heard the claimant say she needed help doing her job. In reply to whether it irritated her that the claimant took unscheduled breaks, the witness stated that it was wrong to take extra breaks. She was not told by the claimant that the crane building was extra work placed on the claimant.

The witness stated that the assistant assigned to the claimant was not with her every day. She confirmed that the work was better when the assistant was with the claimant.

The supervisor told the Tribunal that prior to the meeting of 24th September 2009 she had to finish the claimants work after she had gone home. She accepted the claimant needed extra help as regards washing the bins. The assistant was taken away when the bins were not being washed, as the claimant did not need extra help then. The claimant's hours were from 5-9pm with a break at 7pm for 15 minutes.

Claimant's case

Giving evidence, the claimant stated that she worked for 9 years with the previous company which was taken over by the respondent. She said when she was asked by the respondent company to work in the Crane building, she agreed subject to help being provided as it was too much work for her. The claimant was given help for a year and then it was slowly taken away. She would ask the supervisor was she sending anyone over and was told she could not have help.

Help was given to her on and off. The claimant said she was under pressure with the workload. She constantly let the supervisor know she needed help in the crane building. The claimant stated she did not take unauthorised breaks. She was late for work about three times and was never constantly late. The claimant did not refuse to take directions; she just had too much work.

The claimant gave evidence pertaining to loss and her efforts to mitigate the loss.

Under cross-examination, the claimant confirmed her signature under her contract of

employment and accepted that all steps were followed in relation to the disciplinary procedures. She said she appealed her decision by going through her solicitor. When it was put to the claimant that she should have appealed within 7 days, she said she appealed to the Site Manager and she took it that the Manager would have dealt with it. She did not know she had to appeal on paper. She remembered the meeting of 24th September 2009 but it did not solve the problem.

The claimant confirmed she attended training meetings and that she was capable of carrying out the job. She denied that she was given assistance to pick up the slack and said that it was to assist her with the workload. She also denied that the work she had done could be done by others in 50% of the time it had taken her, as a lot of staff were now gone from that building. The claimant said that she was never offered another position within the company.

In reply to the Tribunal, the claimant confirmed that she told the Site Manager that she was thinking of leaving because her supervisor was always on her back. It was her way or no way. The Manager had said she would discuss it with the supervisor.

Determination

The Tribunal considered all the evidence carefully. The Tribunal considered that the Respondent by and large followed the proper procedures as set out in the claimants Contract of Employment.

At the time of the dismissal and during the course of the hearing, there was conflicting evidence as to whether or not the claimant asked for and/or was given extra help and that issue remains unresolved. Very brief evidence was given by the respondent concerning the issue of alternative work. The Tribunal considers that based on the facts of this case, adequate weight was not given to the issue of alternative work by the respondent, given that the claimant was due to retire in five months.

Accordingly, the claimant was unfairly dismissed and is awarded €650.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)