

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE– *claimant*

UD1252/2010

against

EMPLOYER– *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Mr D. Hegarty
Ms H. Kelleher

heard this claim at Cork on 14th December 2011 and on 24th & 25th April 2012

Representation:

Claimant: Ms Jane Ann Rothwell BL instructed by Ms Bebhinn Murphy of
Collins, Brooks & Associates Solicitors, 6/7 Rossa Street, Clonakilty, Co. Cork

Respondent: Ms Catherine Day of Peninsula Business Services (Ireland) Limited,
Unit 3, Ground Floor Block S, East Point Business Park, Dublin 3

The determination of the Tribunal is as follows:

This application arises out of the dismissal of the Claimant from his employment with the Respondent on the 14th of May 2010. The Claimant had been employed by the Respondent for approximately eleven years at the time of his dismissal.

Respondent's case

Evidence was given on behalf of the Respondent by the production supervisor, the production manager, the general manager and the financial controller of the company. The confluence of that evidence was that the Claimant had a poor disciplinary record and had been given a final written

warning for offences relating to quality and productivity in February 2010. In May 2010 the Claimant who was then on short time was asked to work an extra day on the Friday of the May bank holiday weekend. He told his supervisor that he was unable to and the supervisor without enquiring as to why simply took the information to the production supervisor. The latter prepared a letter, the purposes of which it was acknowledged were threefold, firstly to create a record of the fact that the extra day was offered to the Claimant, secondly to advise the Claimant that would be notifying the relevant government department that work was available to the Claimant on that particular day and thirdly to convey the company's dissatisfaction at his unwillingness to make himself available.

The letter was presented to him by his supervisor and he was asked to sign it for the purposes of acknowledging that he had received it. He refused to sign the letter and became angry and left the factory premises. He returned twenty or twenty five minutes later and advised the supervisor that he had cancelled his arrangements and that he would work on the Friday. This was conveyed to the production manager and the supervisor told him that the letter did not now need to be signed.

As a result of these events a disciplinary process was activated and by letter dated the 5th of May 2010 he was summoned to a disciplinary meeting which was to take place on the 6th of May. The matters that were to be dealt with at the meeting were the following;

1. Alleged failure to carry out all reasonable instructions or to follow rules and procedures.
2. Alleged refusal to sign a standard company letter.
3. Alleged grosses of insubordination and continuing refusal to carry out the company's instructions.
4. Alleged leaving of work station.
5. Alleged leaving of factory.

The meeting proceeded on the 6th of May 2010 at which the allegations were put to the Claimant. The Claimant resumed work after the meeting and a further meeting was called on the 14th of May 2010 at which he was dismissed. Immediately after this meeting he was escorted from the factory premises. He was issued with a letter dated the 14th of May 2010 which provided as follows; "having listened to your explanations, I consider it/them to be unsatisfactory because

- "You failed to follow a reasonable management request/instruction to sign a company form".
- "You decided to leave your work station".
- "You decided to leave the factory and go home".
- "You failed to clock out".
- "You were informed that any further acts of misconduct since receiving the final written warning would be subject to further disciplinary action and may be dismissed".

Evidence was also given by the chairman of the company who conducted an appeal hearing into the dismissal and he upheld the decision.

Claimant's Case

The Claimant gave evidence that he had been employed for eleven years with the company and that in the latter years he had been bullied and excessively pressurised by his production supervisor and

the production manager. He said that he was constantly being called to the office and that his work was being criticized and that his productivity was being criticised.

He felt that he was being subjected to exceptional treatment and that other workers were not treated in the same manner. He felt that his supervisor and production manager had a vendetta against him and “wouldn’t give up until they got rid of him”. He said that he did make a verbal complaint to the general manager but the latter told him to get on with his work and he felt that it was futile to make any further formal complaints.

He acknowledged that he had been previously disciplined and that he was under extreme stress in 2010 because of the harassment that he felt he was being subjected to. He said his health was adversely affected.

On the week of the May bank holiday weekend he was asked by his production supervisor to work on that Friday which he ordinarily would not have been scheduled to work. He had made arrangements to travel to Dublin with his wife and two children for the weekend but when he told the supervisor that he was unable to work the supervisor simply walked away and didn’t seek any explanation nor did he give the Claimant any opportunity to explain why he was unavailable.

On the following day he was approached again by his supervisor with a letter which the supervisor wanted him to sign to acknowledge receipt. He was very upset by the contents of the letter and he refused to sign it. He said that because of his anxiety over the contents of the letter and the stress that he had been under in the preceding weeks he became emotionally upset and left the factory to go home to talk to his wife. He told his wife to cancel the arrangements for the weekend and he returned immediately to the factory. He was away for approximately twenty minutes.

He returned to the factory and advised his supervisor that he would now work on the Friday and that he had cancelled his arrangements and he was told by the supervisor that he did not now need to sign the letter. As far as he was concerned that was the end of the matter until he was summoned to a disciplinary meeting.

Evidence was given by the Claimant’s wife and by two former fellow workers.

The Claimant was unemployed until January 2011 and is now in employment which pays approximately €120.00 net per week less than his previous employment.

Determination

The Tribunal unanimously finds that the events in respect of which the Claimant was dismissed essentially comprised a refusal to sign a letter acknowledging its receipt, and leaving the factory grounds for twenty minutes.

The Tribunal takes the view that notwithstanding the fact that the Claimant had a prior adverse disciplinary record and a final warning on his file that these offences were not of sufficient gravity to warrant dismissal. Consequently, the Tribunal finds that the Claimant was unfairly dismissed. The Tribunal makes no finding in relation to the issue of bullying.

The Tribunal is satisfied that compensation is the appropriate remedy and taking account of

whatever contribution the Claimant may have made himself by absenting himself for twenty minutes from the factory, the Tribunal makes a total award in this case of €15,000.00

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)