

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD193/2010

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. A. Taaffe

Members: Mr. F. Moloney
Ms. M. Maher

heard this claim in Dublin on 9 July 2012

Representation:

Claimant(s):

Mr. Michael Landers, IMPACT, C/O IALPA,
Corballis Park, Dublin Airport, Co.Dublin

Respondent(s):

Mr. Martin Hayden SC and Mr. Frank Beatty BL instructed by
Mr. Killian O'Reilly, O'Rourke Reid & Co., Solicitors,
Pepper Canister House, Mount Street Crescent, Dublin 2

The determination of the Tribunal was as follows:-

Prior to the commencement of the hearing the Tribunal was presented with submissions on behalf of the respondents concerning the non-attendance of the claimant. The Tribunal briefly adjourned, considered these submissions, re-assembled and informed the parties that it proposed to proceed with the hearing. In response, the respondent indicated that, while reserving any

rights that they might have, they would proceed to present their case.

The claimant's dismissal arose as a result of the carrying out of an audit on the performance by the claimant of his duties as a No. 1 Cabin Crew (cabin crew supervisor) which consisted of the preparation of three separate reports by three "mystery passengers" (all of whom were No.1 Cabin Crew) on three separate flights on behalf of the respondent.

The procedures invoked by the respondent consisted of the holding of an investigative meeting to which the claimant was invited followed by a subsequent disciplinary meeting also attended by the claimant. The investigative meeting consisted of a discussion between the parties on the contents of the afore-mentioned reports while the disciplinary meeting dealt with the response of the respondent to investigative meeting and to the claimant's input into it.

A particular aspect of the procedures invoked by the respondent in the investigative process is referred to in detail at the conclusion of this determination. The Tribunal is of the view that while this was unsatisfactory it finds and determines in the circumstances of the case that it was not of sufficient significance to invalidate the investigation.

The Tribunal gave careful consideration to the allegations concerning the claimant in the afore-mentioned reports and determines that matters that were raised in respect of both security and safety were matters of serious concern and were appropriate for the consideration of the respondents. It finds and determines that the concerns expressed in the reports concerning these matters were well-founded. Additionally, the Tribunal determines that the reports cumulatively represent evidence of an appreciable deteriorating level of performance by the claimant in the exercise of his duties.

The Tribunal is satisfied that these matters considered together (a) represent a significant departure by the claimant from the standards to be reasonably expected from an experienced No.1 Cabin Crew (b) that they are not matters that the respondent could be reasonably required or expected to remedy or address by way of written warnings, demotion or suspension and (c) that they fundamentally affect and undermine the relationship of trust that is inherent between an employer and employee.

The Tribunal, therefore, finds that they constitute gross misconduct on the part of the claimant and that his dismissal was, therefore, not unfair. The claimant's claim, therefore, fails.

The Tribunal finally wishes to address a matter which it believes to be of sufficient importance for it to consider so that guidance in respect of it will be available to the parties. This matter arose in the course of the hearing and relates to a procedure adopted by the respondent in the course of its investigation. It is common case that the procedure was not objected to by the claimant. The procedure consisted of the respondent inviting the claimant to the investigative meeting to discuss three written reports which were produced to him for the first time at the meeting. It is the unanimous view of the Tribunal that a proper procedure for the respondent to implement in the particular circumstances would be (a) to furnish a claimant with a copy of the reports in question prior to the investigative meeting or (b), in the event of their failing to do so, to furnish the reports to the claimant at the meeting accompanied by an enquiry from the respondent as to whether a claimant required time to consider them.

Determination:

Having carefully considered all of the evidence adduced during the hearing of this case, the Tribunal is unanimous in finding that the claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

