

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE
- *claimant*
against
EMPLOYER
- *respondent*

CASE NO.
UD706/2010

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Revington S.C.
Members: Mr. J. Reid
Mr N. Dowling

heard this claim at Dublin on 29th August 2011
and 29th November 2011
and 2nd February 2012

Representation:

Claimant: Mr. Seamus Clarke BL instructed by Frank Ward
& Co, Solicitors, Equity House, Upper Ormond Quay, Dublin 7

Respondent: Mr. Eddie Keenan, Construction Industry Federation,
Construction House, Canal Road, Rathmines, Dublin 6

Respondent's Case:

The Tribunal heard evidence from the managing director of the respondent company. The company manufacture and install facades. The claimant is a manufacturing fabricator. The witness as well as being MD of the respondent is also the company accident investigator.

The claimant had an accident and he reviewed the accident report. The report stated that the claimant tripped over a ramp. The claimant was called to a meeting to discuss the accident and discuss injury pay.

He was at a meeting with the claimant and the Production manager (TH) and the Production Director (FH). The claimant did not have a representative at the meeting and did not seek a representative. He referred the claimant to the accident report and the claimant told them that was what happened. The claimant was adamant that the report was correct.

They looked at the cctv footage of the incident and spoke to other employees.

On the 2nd day of the hearing the Tribunal viewed the cctv footage.

The MD resumed his evidence. He explained that he asked the claimant to call to see him. He asked the claimant about the accident. He had not told the claimant that he had viewed the cctv footage. The claimant told him that he fell over the ramp, that he caught his boot on the lip of the ramp.

At a later time they spoke to the claimant again. The claimant told him that he was happy with the accident report form. They told him about the cctv and he said if that was what happened then that is what happened. He told the claimant that they were going to take steps to dismiss him that they could not trust him. The claimant was upset and said he would see a solicitor.

They had spoken to another employee who said that he saw the claimant falling, that the claimant fell but did not fall over the ramp. The claimant did acknowledge that he did not fall over the ramp but this was not until after he had viewed the cctv footage.

The Production manager (TH) who had been employee of the respondent company for thirty-six years gave evidence. He was not present on the evening of 2nd February 2010 when the claimant's alleged accident occurred. He was informed the following morning by a colleague and contacted the claimant to ascertain what had occurred, how he was feeling and could he come to the office to complete an accident report form. The claimant came to the office. He told the witness that he could not complete the form himself as he had broken his collarbone. The witness wrote what the claimant had told him and signed and initialled it on behalf of the claimant. He gave a copy of it to the Health and Safety Department and the Wages Department, the original was placed on the claimant's file.

Later that week the witness and other management (JH the MD, FH – Production Director) viewed the CCTV footage of the area the incident had occurred. Management (The Managing Director, the Production Director and the witness) felt the information given by the claimant on the accident report form and the CCTV footage did not concur. He contacted the claimant and asked him to attend the office for a meeting.

On 9th February 2010 the claimant attended a meeting with the Managing Director, the Production Director and the witness. The claimant said he may have tripped over a colleague's foot. The claimant was informed there was CCTV of the incident. Having viewed it the claimant put his hands in the air and said he had tripped on the ramp. On completion of the meeting management considered the matter and the decision was made to dismiss the claimant and this was about an hour after the meeting.

On cross-examination he stated when asked that the claimant had told him he had been running up the ramp. He refuted that he would have advised the claimant that he should just say he was going to his car. He refuted he had told the claimant that he was invited to the 9th February meeting to discuss him getting a "few bob" while absent. It was not a disciplinary meeting.

When asked he said that the details on the accident report form and the CCTV footage did not "marry up". When put to him he explained that he had not agreed with the decision to dismiss the claimant, he felt it too harsh.

The Production Director (FH) gave evidence. The Production Manager had informed him of the incident. He viewed the CCTV footage and he viewed the accident report. The claimant was called to a meeting to give his version of the events. The claimant was asked if he wished for someone else to be in room with him. The CCTV footage was viewed and the claimant said if that's what happened, that's what happened.

On cross-examination he explained the respondent company did have a Dignity at Work policy and employees could appeal decisions by management. When asked if the respondent was concerned there was to be a personal injury claim submitted he replied that there had been "horseplay" on the ramp when the claimant and others on the evening in question. He told the Tribunal, when asked, if the claimant had been offered to appeal the decision that he probably had not.

When asked if they had asked the claimant if he had made a mistake he replied that they asked him to again explain what had happened. The previous accident the claimant had incurred had no part in the decision to dismiss him. The witness told the Tribunal that they felt all trust was gone.

Claimant's Case:

The claimant gave evidence. He explained that on the evening in question he and some colleagues were walking up the ramp. There had been some banter and horseplay. The next thing he remembers is the ground coming towards him; he tumbled, got up and felt a pain through his side and neck. His colleagues were looking and laughing. He left and drove straight to the hospital.

The following day the Production manager contacted him to enquire what had occurred the previous evening. He told him that he had broken his collarbone and might have clipped his foot on the ramp. The Production Manager asked would he come into the office to complete an accident report. He told the Production Manager that he had been running up the ramp and thought he had clipped his foot off the ramp which made him fall. There would be no claim made against the company.

Later that week he received another call from the Production manager to attend a meeting the following day, 9th February 2010, to sort out some money while he was on sick leave. He attended the meeting with the Managing Director, the Production Director and the Production Manager. He told them what had occurred the previous week on the ramp. He told them he would not make a claim against the company and would sign anything. He told they felt he was not being honest. When replying he had no reason to lie he was informed they had CCTV footage which he viewed. He watched it. They left the room and returned about 5 minutes later informing him that they felt he could not be trusted. He told them he had no reason to lie, asked were they sacking him and was told yes. He was escorted off the premises.

He received his letter of dismissal dated 9th February 2010 by registered post on 23rd February 2010. The claimant gave evidence of loss.

On cross-examination he refuted he had told management that if he had fallen on the premises they was libel. When he was told he was sacked he told them he would get legal advice.

Determination:

The Tribunal have viewed the CCTV footage on a number of occasions and carefully considered the sworn evidence adduced over the three days of this hearing. The Tribunal feels the claimant did not deliberately intend to mislead the respondent. However it appears from the footage that there was an amount of horseplay between the claimant and his colleagues on the evening in question. The Tribunal finds the disciplinary procedures used to deal with this matter were flawed.

The Tribunal finds the claimant was unfairly dismissed and awards the sum of € 32,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)