

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD1764/2010

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Lucey

Members: Mr. J. Hennessy
Ms. S. Kelly

heard this claim in Clonmel on 2nd May 2012 and 17th July 2012

Representation:

Claimant(s):

Mr. Tiernan Lowey BL instructed by
Hughes & Liddy, Solicitors,
2 Upper Fitzwilliam Street,
Dublin 2

Respondent(s):

Mr. Niall Beirne SC instructed by
Matheson Ormsby Prentice, Solicitors,
70 Sir John Rogerson's Quay,
Dublin 2

The determination of the Tribunal was as follows:-

It was alleged that the claimant, a quality assurance operative, who had worked for the respondent (a manufacturer of medical devices) from 3 November 2008, was unfairly dismissed on 26 January 2010. A quality control system (hereafter referred to as QS) was commenced in

early January 2010. The claimant, when she could not understand an error which came to her attention when QS was launched, contacted her line leader for assistance. The system had erroneously produced two sets of data. The respondent contended that the claimant was guilty of gross misconduct deserving of dismissal on the grounds that the claimant had falsely manufactured one set of data.

It was decided, after a formal investigation undertaken by the respondent, that the claimant had falsely manufactured test result data. The claimant's denial of this charge was accompanied by the claim that she did not have the expertise to knowingly do this. It was further alleged that the claimant did not have enough training on QS to deliberately manipulate it and that the day in question had been QS's first day of operation.

The dismissal decision was upheld after an appeal by the claimant.

It was alleged that the respondent had failed to implement its own training policy in particular with regard to procedural compliance. It was argued that there should have been retraining of the claimant (rather than a dismissal) because the procedure had not been clear or because the claimant had not known how to implement it and that the claimant had been unfairly dismissed without fair procedures by the respondent after she had striven to conduct herself correctly.

The respondent's position was that the claimant had been dismissed fairly by reason of gross misconduct in accordance with Section 6 (4) (b) of the Unfair Dismissals Acts, 1977 to 2007.

It was contended that a full investigation had taken place into allegations of misconduct against the claimant and that, in accordance with fair procedures, a disciplinary process then took place involving the claimant (which resulted in the claimant's dismissal) such that the claimant had no claim under the above Acts or at all.

The claimant worked in the quality assurance section testing units used in the medical industry. When a unit is tested, it is destroyed and cannot be used or tested again. The respondent contended that the claimant entered two results for a single unit and, as a unit is destroyed in a test, entered false data in the second test. The claimant contended that there was potential for an error in the IT system and that the procedures used by the respondent were flawed.

KL, a senior quality engineer with the respondent, explained to the Tribunal that each unit costs €1500.00 and that they are exported all around the world. When a batch of units is created, one in forty is checked by the Quality Assurance (QA) section where the claimant worked. This involves twenty seven different tests including visual and tolerance tests. The unit is destroyed and discarded.

KL connected his laptop to the employers IT system and showed the Tribunal the steps involved in the QA process. The test is referred to as "reliability engineering testing".

The results of each test are entered in an IT system which was bought off the shelf. The IT system was tested in autumn 2009 and was introduced into the respondent's workplace in

January 2010. The system records data and stores it. It looks for a log-on and every thirty minutes the system will log-off if not used.

The unit to be tested is selected randomly and arrives in the QA section on a trolley. The first test involves a visual inspection, checking the packaging, label and the product for errors. The unit number is typed into the IT system or the barcode can be scanned. The system lets the user know where they are in the testing process and the user can save the information at any time.

The user would then add the manufacturing line, shift number (the shift the user is working), and add the unique identification number for the unit to the IT system. There are three staff working in each lab on each shift.

The next test is a dimensional test to ensure the unit conforms to the specifications of the respondent. At every stage, the IT system is updated to include the test results. The information entered into the IT system by the user is at the front end and is captured by a central system. If the information is not saved, it is lost.

The unit is then tested until destroyed and the measurements and data are inputted into the IT system.

KL was asked by DOL to look at the IT system to identify what had occurred. He concluded that there were two records on the system for the same unit entered by the claimant using her log-on. KL said when a unit is tested it is destroyed, and could not be tested again. He said it is possible different units will give you different measures, but each unit is destroyed in each test.

KL is the administrator of the IT system and can go to any point on the IT system. He opened to the Tribunal the records for the 5th January 2010 and showed how he discovered the two records for the single product.

On the 12th January 2010, he sent a memo to RH which showed the two test results. KL checked the system and said the system cannot create data itself

Giving sworn testimony, GOG was asked about the night of 5 January 2010 and said that she was the quality control "lead". The claimant had said that one of her records had been duplicated in the system. The claimant did not explain this. GOG thought that it had copied twice. Asked if she had told DOL, GOG replied that she would have copied DOL by e-mail.

GOG said that she had attended a meeting with the claimant on 6 January 2010 and that there had been no duplication. She said that the meeting had been to find what had happened and that she had worked in quality control for ten years for the respondent (and five years as quality control lead).

According to GOG, it was not the system but the person that would generate data. She said that she had no involvement in the disciplinary process. GOG had found the claimant good to work with and did not think that the meeting with the claimant had been oppressive. She could not recall the claimant being upset.

Giving sworn testimony, DOL said that she had been working on quality control at the material time and that the claimant had reported to her. DOL became aware of the incident and called the claimant to a meeting which was lengthy. She could not recall it being difficult, aggressive or confrontational. It was not a disciplinary meeting.

A possibility discussed was that perhaps the claimant had forgotten to enter a value immediately but had read it off a screen some time later and entered it at that time. This possibility was dismissed on the grounds that the claimant had already stated that another "QC" had been waiting immediately after her.

DOL did not think that the atmosphere changed and did not believe that the claimant was coerced. She believed the claimant's "admission" as to what happened. The claimant got upset.

KL's 12 January report "seemed reasonable" to DOL. A disciplinary process was conducted by DOL and RH. The claimant was told that she could bring someone but did not do so. The claimant was allowed to review all minutes. On 22 January 2010 the claimant was told that she would be dismissed for falsification of results.

Asked why the claimant had been dismissed, DOL said that a breach of trust was gross misconduct and that product quality was of utmost importance. Regarding what had occurred, the claimant had not given her an explanation that she found acceptable.

Giving sworn testimony, AM said that he held the post of operations manager with the respondent and that he (and OD) dealt with an appeal by the claimant. Relevant people were interviewed. Asked at the Tribunal hearing if the claimant had given a satisfactory explanation, AM replied that they had issues with what the claimant had told them but that the claimant had answered questions fully. They "had issues compared with the objective record". They found that the claimant had not explained the extra test data in a way that made sense to them. They met after reviewing all notes and found that the respondent had been reasonable. The claimant had said that she had drawn attention to the problem and the system did create issues not particular to the claimant but they found that data had been falsified. The claimant had faced a challenging situation but it did not excuse or justify falsification of data. AM said that the claimant had made an admission that was very credible.

It was put to AM that the claimant had alleged that DOL had had a bias against her. AM replied that DOL had formed her opinion "very early in the process" but that he and OD had not believed bias in place. AM said that DOL "did have her mind made up" but that they had thought that DOL had been proved right anyway.

AM stated that the importance of quality control was immense and that the respondent was "highly regulated" such that all the respondent did had to be right. Quality control had to be done "with integrity". AM and OD found that the claimant had falsified data and he told the Tribunal that this was gross misconduct for which dismissal was reasonable.

Giving sworn testimony, JF said he had been a respondent employee at the material time but no longer. JF was a manufacturing supervisor and had worked in the area of implants. He had been told that the new system (QS) was coming to his area. It had been due two years before but issues had necessitated changes. JF said that "it can auto-generate data" and "it's designed to do that". He said that "data was automatically generated" and that "it did duplicate data" even

though KL had said that auto-generation was impossible. JF said that there were "items which caused data duplication".

Under questioning, JF said that he had had a relationship with the claimant but that he did not think it relevant that he was a former partner of the claimant. Asked if he intended to make a claim to the Tribunal, he replied that he was not at the hearing out of spite but insisted that QS gave rise to duplication.

When it was put to JF that he himself had been dismissed for falsifying records he replied that a dismissal is unfair till proved fair. He denied that he had decided to throw sand in the eyes of the Tribunal.

Giving sworn testimony, the claimant said that she had been hired as a quality control operative and she acknowledged the importance of quality control. She said that she had received no formal training on QS.

When it was put to the claimant that the QS system had been rolled out and withdrawn, the claimant replied that "there were things wrong with it".

Regarding the shift which began on 5 January 2010, the claimant said that she had been told that she had to use QS but that, when she did, she found duplication. She reported this and thought that GOG might want to be appraised of it although the claimant could have picked a replacement part. She did not feel that there was anything wrong with what she had tested.

The claimant came to work as normal the next day. She was "gowning up". GOG asked to talk to her. All the relevant data was sent to KL and MF. THE CLAIMANT said that the data had been duplicated. All that GOG said was that DOL wanted to talk to her. There was no mention of misconduct or discipline. DOL asked the claimant what had happened and the claimant told her. The claimant said there had been duplication. DOL said that the claimant was telling "a cock-and-bull story". The claimant thought that DOL had her mind made up.

Asked if she had input data from memory, the claimant replied that this was "a lot to remember". She had told the respondent that it was not possible and that it could not be memorised but DOL did not accept what had happened. When questioned, the claimant was told that "I don't know" was not an answer. She was getting very frustrated because it was two people against one. She admitted to the Tribunal that she "did use some curses". She would give an answer to them and they would not accept it.

It was put to the claimant that, under questioning by the respondent before, she had said: "Whatever!" She told the Tribunal that she had been trying to keep herself calm but had got upset towards the end of the meeting. She had "just blocked out what they were saying" and had been told to go on break but had asked to go home.

Asked if she was suspended on 7 January 2010, the claimant replied that she had rung to say to say that she was not going in.

The claimant acknowledged that she had been told that the allegation against her was data falsification but told the Tribunal that she had not made any admission. She said at the Tribunal hearing that she had said "Whatever!" just so that the meeting would stop. She got information

at the meeting but not in advance. She called on the respondent to interview a colleague (CB) because the claimant thought that CB might have heard something. The claimant had not known and still did not know what had happened on the 5 January 2010 shift. Regarding procedure, the claimant told the Tribunal that the line lead was first-in-command and she had felt that the best thing to do was to tell GOG.

It was put to the claimant that the respondent had never suggested a motive for her to falsify data. She replied that she had asked why would she do it and that she had never thought that telling GOG about the duplication could get her "fired". She told the Tribunal that had been blamed for something that was not her fault. However, DOL e-mailed her a "Notice of Letter of Dismissal" on 26 January 2010.

The claimant acknowledged that she had been the recipient of a warning previously but said that it had been nothing to do with quality control. She said that the respondent had had a lot of procedures but that she had received nothing about the respondent's disciplinary process prior to her dismissal. Regarding her appeal, she told the Tribunal that AM and OD did listen when she appealed and that she thought that she had been successful in her appeal.

The claimant said that her attendance with the respondent had been "one hundred per cent" but that she had found it hard to mitigate her loss by obtaining new employment and had decided to try to improve her qualifications by studying human resource management.

Determination:

Having carefully considered all the evidence including the testimony of many witnesses, the Tribunal found that the respondent had fallen a long way short of showing that there had been a fair dismissal. It was clear that there had been no question of industrial espionage or of advantage to the claimant in what had occurred on the first day of resumption of the QS system. When the claimant realised that there was something wrong she reported it to a superior without delay.

A respondent witness (KL) gave evidence which suggested that the QS computer system was infallible and could not err. The Tribunal does not accept that. Computer systems (even in major banks) can have teething problems and can fail. The respondent was working on a parallel system for a while. The claimant had a problem. There was training deficit.

The respondent did not call to give evidence certain potential witnesses (DM, CB and MF). The absence of these is noted. The respondent's quality manager and HR manager were not called.

The respondent had a predetermined view that the claimant had been guilty of gross misconduct. DOL, who dismissed the claimant, accused the claimant of telling a "cock-and-bull

story". Findings for the claimant in the appeal were ignored. Dismissal was disproportionate.

Allowing the claim under the Unfair Dismissals Acts, 1977 to 2007, the Tribunal finds that the claimant was unfairly dismissed within the meaning of the said legislation and, in all the circumstances of the case, unanimously deems it just and equitable to award the claimant compensation in the amount of €42,500.00 (forty-two and a half thousand euro).

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)