

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *claimant*

UD38/2010

against

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr C. Lucey
Mr C. Ryan

heard this claim at Dublin on 7th June 2012, 8th June 2012 and 5th September 2012

Representation:

Claimant(s) : Mr. Michael Landers, Impact, c/o IALPA, Corballis Park,
Dublin Airport

Respondent(s) Mr Martin Hayden SC instructed by O'Rourke Reid, Law Firm, Pepper
Canister House, Mount Street Crescent, Dublin 2 on first and second days of
the hearing and by Mr Frank Beatty BL instructed by O'Rourke Reid Law
Firm on the third day of the hearing.

Respondent' Case

The respondent company is an international airline company. The claimant was employed as a No 1 cabin crew employee. His responsibilities were to carry out his duties in accordance with company policy and procedures on airline flights. He also had a supervisory duty in relation to No's 2, 3 and 4 cabin crew employees to ensure that they were carrying out their duties in accordance with company procedures. The company regularly placed mystery passengers (hereinafter known as auditors) on flights the purpose of which was to assess sale procedures carried out by the No 1 cabin crew employee. Cabin crew employees knew of the practice but did not know the identity of the auditor on any given flight.

The company's European Bases Manager known as (SL) gave evidence that an auditor known

as (NK) was placed on two of the company's flights on 6 July 2009 and 24 July 2009. (SL) gave evidence that she received the reports of the auditor in respect of the flights and had concerns as a number of procedures had not been followed according to the reports. The claimant was invited to an investigation meeting to establish the facts and provide him with an opportunity to respond to the report. The meeting was held on 27 July 2009 and the claimant was invited to have a work colleague present with him but did not bring a work colleague with him. The meeting was attended by (SL), the company's personnel officer known as (CO'H) and the claimant. A copy of the auditor's reports from the flights concerned was shared between the attendees at the meeting. The claimant was advised that the meeting was scheduled following receipt of the auditor's report and a note of the questions asked and the claimant's responses were opened to the Tribunal. The meeting lasted 40 minutes and, at its conclusion the claimant was advised that his file would be reviewed and a decision taken whether or not to proceed to disciplinary action.

On 29 July 2009 (SL) invited the claimant to attend a disciplinary hearing scheduled for 5 August 2009. The claimant was again told that he may invite a work colleague to attend the meeting with him. The claimant did not bring a work colleague with him. The meeting lasted 45 minutes and the company's note of that meeting was opened to the Tribunal. At the conclusion of the meeting the claimant was advised that the company would be in touch with him regarding the outcome. On 10 August 2009 the claimant was invited to attend a meeting scheduled for 12 August 2009 the purpose of which was to communicate the outcome of the disciplinary process. He was again invited to bring a work colleague with him. He did not bring a work colleague to the meeting. At the meeting the claimant was informed by way of letter dated 12 August 2009 that his contract of employment is terminated with effect from 12 August 2009. The letter outlined inter alia that the claimant had breached a number of safety and security procedures and had committed a fundamental breach of company standards and his actions amounted to gross misconduct. The Tribunal heard evidence that while the claimant had breached sales procedures he was not dismissed for these breaches. He was dismissed for breaches of safety procedures.

The Tribunal heard evidence from (NK) that she was asked by the respondent company to be an auditor on the two flights concerned. She has completed a total of 40/50 such flights as an auditor. She gave evidence that she never met the claimant previously and did not know him. She was also employed as a No1 cabin crew employee. She gave evidence of what she observed as she boarded the flight and of what she observed on flight. She sat in row 2 of the cabin. She completed her reports and gave them to the company. The main purpose of the auditor's reports was targeted at sales but she included additional information on her reports as she was shocked by what she observed and would not have been happy for her family members to travel on the flights. The claimant did not make eye contact with her or speak to her on either flight. He gave no recognition of knowing her on either flight.

She gave further evidence that she received two facebook messages from the claimant on 15 and 16 August 2009. The first message read "lies lies lies, you have written only lies! Shame! jobless with a little daughter, I won't forget" and the second message read "hi there, see

around very soon! I have been dismissal so I am plenty of time". She was shocked to receive these messages and brought them to the company's attention. She gave evidence of receiving a voice mail message on her telephone on 17 August 2009 which she believed was from the claimant. A recording of this voice mail was played to the Tribunal. She received a further abusive telephone call from the claimant in October 2009 and has made a complaint to the Spanish police. She denied that she met claimant at a party in December 2005/January 2006. She told the Tribunal that her daughter was born in March 2006.

At the re-convened hearing on 5 September 2012 counsel for the respondent informed the Tribunal that the witness had mistakenly given the date of birth of her daughter as March 2006 when in fact her daughter was born in March 2007. The witness was present at the re-convened hearing to give evidence to that effect if required to do so. He stated that her substantive evidence remained the same as that given at the hearing on 8 June 2012. The claimant's representative did not wish to cross-examine the witness on that point and accepted that her daughter's date of birth was in March 2007 but stated that it questioned the reliability of the evidence of the witness.

(AD), head of Inflight for the respondent company gave evidence that she conducted an appeal hearing following the claimant's letter of appeal received by the company on 27 August 2009. She conducted the appeal hearing on 3 September 2009. She had no involvement in the matter prior to the appeal hearing. The claimant was not invited to have a work colleague present and he did not suggest that he wanted a work colleague present. He did not request copies of the auditor's reports or minutes of the previous hearings. She addressed each point of the claimant's appeal and also gave him the opportunity to raise any additional information. The claimant raised two new issues: (1) that he had met (NK) previously and (2) that he had never had a "no show" while working for the respondent and he had been asked to complete mystery passenger reports on other crew members. The appeal hearing lasted 1 hour and 25 minutes and a detailed company file note from the appeal hearing was opened to the Tribunal. She confirmed that she contacted (NK) following the appeal hearing who again stated that she did not know the claimant.

She reviewed each of the points of appeal and did not find any of the claimant's explanations acceptable. She concluded that there were no grounds to overturn the decision of (SL) and wrote to the claimant on 16 September 2009. She informed him inter alia that he breached almost every procedure which in her view breaks the bond of trust which must exist between employer and employee. She found that he provided contradictory and questionable answers and statements and she found his evidence unreliable and untrustworthy.

Claimant' Case

The claimant gave evidence that he commenced working for the respondent in June 2005 and became a supervisor in April 2006. Prior to working for the respondent he worked for the Military police in Italy and had obtained a law degree. He liked working for the respondent and was based in Bergamo. He had no disciplinary problems prior to July 2006. He was invited to

the investigation meeting on 27 July 2009 and believed it be concerning his sales performance on flights. He was curious but not scared as he had nothing to hide. He was then told of the auditor's report and replied to the questions that were put to him. He felt that he was not given the chance to reply properly, but gave his version of events. He denied some of the allegations and gave his explanations to the company. He admitted that he did not follow company procedures in certain instances and outlined his reasons for not doing so. He gave evidence that he met (NK) at a party in Girona in December 2005 or January 2006. There were 7, 8 or 9 people at the party and (NK) rejected his advances towards her. He admitted that he was unpleasant towards her at that time and feels that she probably bears a grudge towards him as a result of that. He denied that he said to (AD) that he met her in Italy and had to kick her out of his house as recorded in the company's note of the appeal hearing of 3 September 2009.

He gave further evidence that he found a wall between himself and the company when he tried to answer the allegations against him. He believed that his word was less important. He accepted that he had made the Facebook postings to (NK). The aim of the messages was to give her 5 bad minutes. He did so because his life had disintegrated, his salary was gone. He had a two year old child and had no possibility of paying his expenses. He found himself jobless, without an identity. His marriage was close to splitting and he was suicidal. He told the Tribunal that he did not leave a voice mail message on (NK's) telephone. He accepted that he called her in October 2009 and probably said "I hate you" or "Thank you very much". He could not recall for the Tribunal exactly what he said. He gave evidence that he did not recognize (NK) on either flight and discovered her name on the letter of dismissal.

The Tribunal heard further evidence that the claimant received copies of the company procedures in relation safety and emergency procedures. He understood the procedures and had been trained in the procedures. He accepted that the company placed a huge emphasis on safety procedures and admitted that he did not follow all of the procedures. He did not believe that he breached safety procedures. He accepted that the company's rules must be respected but believed that he had a flexibility in applying the rules. He gave evidence that he was dismissed for no apparent reason. He disagreed with the auditor's report and explained his reasons to the company. The Tribunal heard further oral and documentary evidence in relation to the claimant's loss and oral evidence in relation to his efforts to secure alternative employment since his dismissal.

Determination

The Tribunal have carefully considered all of the evidence over the three day hearing together with the documentation submitted.

The claimant was dismissed from his employment on 12 August, 2009 following an investigation meeting on 27 July, 2009 and a disciplinary meeting on 5 August, 2009. He appealed the decision to dismiss and the dismissal was upheld by letter dated the 16 September, 2009.

The claimant was given the option of bringing a colleague to all of the meetings but he chose not to and did not make an issue of it at any stage of the process until the hearing before this Tribunal. It was suggested that the reason he couldn't bring someone was because the respondent's policy was not favourable to the colleague in relation to their time or expenses. This issue was not opened to the respondent at any stage of the investigation or disciplinary process and the grievance procedure was not invoked. The Tribunal do not find the claimant's evidence in this regard credible.

The claimant's dismissal was based on two separate grounds, safety and sales. The respondent conceded that the sales issue alone would not have progressed to a disciplinary hearing, on that basis the Tribunal is not placing any emphasis on the sales aspect of the dismissal. Great emphasis was placed on the breaches of safety and security. The claimant's flights on 6 July, 2009 and 24 July, 2009 were audited by NK. He was given prior notice of the audits. It was mainly a sales audit, however the breaches in safety and security were so alarming NK added an additional section to her report. These breaches were put to the claimant at the investigation meeting by SL, the disciplinary hearing by SL and at the appeal hearing by AD. The Tribunal note that there are numerous inconsistencies regarding the claimant's explanations during the disciplinary process compared with his explanations during the hearing. The claimant's core evidence was that NK had a personal vendetta against him arising out of an incident at a party three years earlier. There were inconsistencies in the claimant's evidence in relation to his alleged encounter with NK. NK denied ever meeting the claimant. It is notable that the claimant did not recognise NK when she boarded both his flights or at any stage during those flights despite the fact that she was sitting in row two. The Tribunal is satisfied that the reports furnished by NK were genuine and that the notes of the meetings were accurate. The claimant's evidence in relation to this entire issue was not credible.

The Tribunal is satisfied with the explanation of NK and based on the fact that once she realised she had made a mistake in relation to her daughter's date of birth she promptly informed her employer and the Tribunal is of the view that the credibility of her evidence is not affected. The Tribunal remain satisfied that NK and the claimant did not meet at a party in December 2005/January 2006.

The claimant stated during his evidence that he was not given a copy of the breaches, the auditor's report or the notes of the investigation or disciplinary meeting. It would be preferable that the claimant was given these documents prior to the meetings however it is noteworthy that he never requested them or made an issue of it prior to this hearing. Other than that, the process was fair and he was given ample opportunity to put his case forward.

The Tribunal find in all of the circumstances that the claimant's claim under the Unfair Dismissal's Acts must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)

