

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE-*claimant*

CASE NO.
UD1795/2010

Against

EMPLOYER-*respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr N. Russell

Members: Mr J. Browne
Mr F. Dorgan

heard this claim at Waterford on 22nd May 2012

Representation:

Claimant: Mr David Lane, Siptu, Connolly Hall, Summer Hill, Waterford

Respondent: Mr. Jim Healy, IBEC Mid-West, Gardner House, Bank Place,
Charlotte Quay, Limerick

Respondent's Case

The respondent is a large chain store with a number of branches around the country. The manager (SW) of the branch the claimant worked in gave evidence. SW had been working for the respondent for a number of years before he commenced in this store in September 2009. On Friday 12th of September while he was on annual leave SW got a phone call from the duty manager to say there had been an incident in the store; there had been an altercation between two members of staff. The following Monday SW took statements from both parties (claimant and MS) in the presence of their representatives. The claimant and a number of other staff were interviewed by SW. None of the witnesses could corroborate the claimant's version of events. SW decided their behaviour was not conduct befitting of an employee so referred the incident to the manager of another store (PG) to commence the disciplinary process.

It became clear that the claimant had made a number of complaints against the other party (MS) and that a complaint of bullying and harassment had been made in writing dated the 6th of September but as SW was not present the duty manager refused to accept the formal complaint.

SW only investigated the incident not the events leading up to the 11th of September. SW did not consider provocation as 'physical contact is never ok.'

One of the witnesses to the incident (TD) gave evidence. TD was a sales assistant at the time the incident occurred. The claimant had asked TD to accompany him to talk to MS regarding a derogatory comment he had just made to him. TD gave detailed evidence of the altercation that ensued. TD is not aware who activated the panic button but a checkout assistant called the Gardaí to cancel the alarm.

A Store Manager (PG) initially worked in the claimant's branch until he transferred in September 2009 to be replaced by SW. There had been issues between the claimant and MS. They were always informal complaints that were quickly resolved. PG did not take formal action on the complaints as a lot of the incidents were occurring outside of working hours/premises and no 'formal' complaint had been made. MS had been suspended on a prior occasion for an incident that occurred outside his home. The claimant had asked to be moved from the area he worked in to move away from MS.

PG received a phone call in his new store from MS recounting the incident with the claimant. PG then spoke to the duty manager and then contacted the HR Department. He reverted to the duty manager and told him to inform both the claimant and MS that they were being suspended on full pay until the incident could be investigated. HR put all the communication regarding the disciplinary process into writing.

PG received the statements from SW before the disciplinary meeting. The disciplinary meeting was held on the 16th of September 2009. The claimant was accompanied by his father at the meeting; he was concerned about what was going to happen. All the evidence of the incident was put to the claimant for explanation. PG then adjourned the meeting to consider and make a decision; he reviewed all the documentation and consulted with the HR department. PG decided to dismiss the claimant;

'I have decided that your actions amount to gross misconduct and I have taken the decision to summarily dismiss you without notice effective from the 16th of September 2009.'

This decision was appealed by the claimant. The decision to dismiss was upheld.

The claimant did not attempt to give PG a formal complaint letter but he was aware that the claimant intended to lodge a formal complaint. A formal complaint is assessed by the responsible manager then a decision is made on whether or not to progress the complaint. The claimant's formal complaint was not taken into consideration when PG made the decision to dismiss the claimant as he was not aware of it. The claimant's grievance does not excuse the behaviour he was dismissed for.

Claimant's Case

The claimant gave detailed evidence of the issues between himself and MS. The claimant continuously spoke to his manager (PG) about his problems with MS and went so far as asked to be moved to a different department. The claimant was promised that when the new manager SW arrived that he would be moved. All the store management were aware of the issues.

On the 8th of September 2009 the claimant attempted to give the duty manager a formal letter of complaint outlining his grievances. The duty manager refused to accept the letter. He then tried

to give the letter to another manager which was again refused; both managers told the claimant to wait until the new store manager started work (SW).

The claimant gave detailed evidence of the incident that occurred on the 11th of September between himself and MS. The claimant disputes hitting MS; he was only defending himself and he was the only one with physical marks left after the altercation.

The claimant gave evidence of his loss and attempts to mitigate his loss.

Determination

It is the majority decision of the Tribunal (Mr. Finbarr Dorgan dissenting) that the claimant was not unfairly dismissed. In the circumstances presented to the respondent, it acted fairly and evenly and followed proper procedures. It is the Tribunal's view that the respondent was not unreasonable in concluding that there had neither been intimidation of the claimant nor provocation sufficient to justify his actions.

Having decided to avail of the Company's Grievance Procedures in preparing a letter of Grievance to be submitted to his Manager on his return from holidays, the claimant then opted to address the same grievance directly with MS before the Company had a reasonable opportunity to investigate. This was unwise in circumstances where confrontation between the parties was likely. The claimant's dismissal was the consequence of his own actions and was justifiable in all of the circumstances.

Accordingly the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)