

## **EMPLOYMENT APPEALS TRIBUNAL**

### **APPEAL OF:**

**CASE NO.**

EMPLOYER  
- appellant

UD2276/10

Against the recommendation of the Rights Commissioner in the case of

EMPLOYEE - 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 J. Browne  
Mr Al Butler

heard this claim at Carlow on 9<sup>th</sup> May and 1<sup>st</sup> August 2012.

### **Representation:**

Appellant: Ms Muireann McEnery, Peninsula Business Services (Ireland) Limited  
Unit 3 Ground Floor, Block S, East Point Business Park, Dublin 3

Respondent: Mr Ramon O'Reilly of SIPTU, George's Street, Newbridge, Co. Kildare

This case came before the Tribunal by way of an appeal by the appellant (the employer) against the recommendation of the Rights Commissioner reference r-090682-ud-10/TB.

The determination of the Tribunal was as follows:

### **Appellant's Case**

The respondent worked as a cable technician. His job was to lay cables for network connections. The respondent had been employed for almost 6 years. There is no formal qualification for a cable technician. He was shown how to do his job. There was some training given on fitting connectors. Some cables require a particular torque spanner while others do not. In March 2009 while the respondent was working on a site he inadvertently cut through a HDML cable. The client invoiced the appellant for the costs and these costs were deducted from the respondent's wages.

The incident that led to the respondent's dismissal was a complaint from a client about poor quality work on site C in Co. Wicklow. It was stated that the cable connectors had not been correctly tightened and as a result there was noise on the network. The poor workmanship was not

immediately evident. It became apparent over time that there was a problem and the problem was identified as originating with the connectors.

PD is the respondent's Line Manager. He had a good working relationship with the respondent. The respondent was part of a two man crew allocated to connect the cables on site C. Old connectors had to be removed and new ones connected. This work was not outside the scope already done by the respondent on a day to day basis. To ensure traceability the respondent and his colleague were issued with individual tags. The respondent's work was tagged so as to identify his work. PD spoke to the employees beforehand and stressed the importance of the job going smoothly. There was a real focus on this project. Employees were aware what was expected of them.

PD visited the C site. He opened sample connectors and he identified the respondent's connectors from the tags. His connectors were all loose to the extent that it would certainly cause noise. There was also a problem with the other employee's work.

The respondent was suspended with pay on 28<sup>th</sup> September 2009 pending an investigation.

An investigation meeting was held with the respondent on 5<sup>th</sup> October 2009. Fifteen connectors were checked and thirteen had faults. The nub of the issue was that the cables had not been sufficiently tightened. The respondent contended that he had never been shown how to tighten the cables correctly. PD contended that the company provides on the job training and also contended that the employees were more than capable of carrying out the job. The respondent said it was raining quite heavily during the relevant period. PD said employees regularly work and still work through damp conditions. The claimant had purchased his own rain gear.

The respondent was invited to a disciplinary meeting on 15<sup>th</sup> October 2009 which was chaired by CL, HR Manager. At this meeting the respondent was accompanied by his union representative. CL informed the respondent that she was treating the matter as one of gross misconduct and that dismissal was a possible sanction. Ten separate allegations were put to the respondent. The most important allegations were poor quality of work and falsification of time sheets. The issue with the time sheets came to light following the investigation meeting. The respondent raised the issue of lack of supervision on the job. JC was his supervisor. PD contended that as the respondent and his colleague were two experienced and trusted employees there was no need for them to be supervised every day. JC visited the site every second day.

CL gave the respondent the opportunity to give his version of events. The respondent said that working conditions were poor as it rained every day of the 2 weeks the work was being done. She did not accept this as when the connectors were opened they were dry. The problem was inadequate tightening. The respondent accepted that he did not alert his supervisor that he had difficulty tightening the connectors. He was an experienced worker and so could do the work to the required standard.

The worksheets falsified by the respondent claimed that he had done work that he had not done. The respondent was guaranteed 40 hrs. per week, was paid a basic wage and a piece rate for work done. He would have been paid extra for the work he claimed he had done. The respondent could simply have written the work he had done on the sheet ignoring the category boxes or alternatively he could have added an additional sheet.

CL did not accept that he did this to cover work that he had actually done. She did not accept that

the respondent's supervisor was aware that he had not done the work claimed. The supervisor signed off on the worksheets because he had trusted the respondent.

CL wrote to the respondent on 19<sup>th</sup> October 2009 and informed him that she had decided to summarily dismiss him.

### **Respondent's Case:**

The respondent was employed by the company for six years. Adverse weather conditions prevailed while he was working on site C and he might have mentioned the weather to PD. He had raised the difficulties he encountered with the rain with his supervisor JC and asked for covers for the work he was carrying out on site. JC said he would check this out. The respondent contended that he encountered many problems on site C and two people were not enough to carry out the workload. He was under pressure working on site C. It had to be completed in three weeks.

Regarding the completion of his timesheets, the respondent contended that he did falsify the timesheets but that he carried out other work which was not his. He was doing the work of four to five employees. He raised this verbally with JC. He did not receive any financial advantage from doing this. He contended that the comment box on the time sheet was not sufficient for inserting other work carried out by him. He had only received one day's in house training for his role. All other work he had carried out during his tenure was done internally.

The respondent sent CVs to many businesses and was out of work for two years. He secured contract work in October 2011.

### **Determination:**

The Tribunal has considered all of the evidence given over the two day hearing together with the documentation submitted.

Evidence was given that the respondent was dismissed from his employment on the 19<sup>th</sup> October 2009 for the two main reasons, firstly the issue with regard to his work at site C in Co. Wicklow and secondly his falsification of timesheets.

The respondent admitted that he did falsify the timesheets however stated that he received no financial advantage from doing this. He said he did so because there was no room on the sheet to specify the work that he had done. The Tribunal do not accept this explanation as it was open to the respondent to simply write the work he had done on the sheet ignoring the category boxes or alternatively he could have added an additional sheet.

Evidence was also given that the issue in relation to site C was specifically related to the respondent's work. His work was tagged. Once the cables had been tightened the issue resolved itself. The Tribunal is satisfied that the issue on that site was due to the respondent's poor workmanship.

The respondent suggested that he was not given adequate training. The Tribunal notes that he had carried out this work for six years on over seventy sites and stated that he did so to a very high quality. On that basis training or lack thereof could not have been the reason for his poor workmanship on site C.

The respondent was subjected to an investigation meeting, disciplinary meeting and appeal hearing.

He was not afforded the opportunity to have a representative at the investigation meeting. He did have a representative at the disciplinary meeting however that representative was not allowed to participate. The respondent made no comment in relation to restrictions placed on his representative until the hearing of this matter. On that basis the Tribunal finds that any of the appellant's shortcomings in relation to the disciplinary procedure do not render the dismissal unfair.

The respondent produced no evidence in relation to mitigating his loss.

The Tribunal upsets the recommendation of the Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)