

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

Claimant

CASE NO.
RP3121/2010
UD2324/2010
MN2262/2010
WT1028/2010

against
EMPLOYER

Respondent

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr. J. Reid
Mr G. Whyte

heard this claim at Dublin on 10th April 2012
and 29th May 2012

Representation:

Claimant(s) : Ms. Grainne Duggan BL instructed by:
Anderson & Gallagher, Solicitors, 29 Westmoreland Street, Dublin 2

Respondent(s) : Mr. Noel O'Hanrahan, O'Hanrahan Lally, Solicitors, Dublin Law Chambers,
77 Talbot Street, Dublin 1

On the second day the claims under the Redundancy Payments Acts, 1967 to 2007 and the Organisation of Working Time Act, 1997 were withdrawn.

The determination of the Tribunal was as follows:-

Background:

The claimant was employed as a General Operative from 21st April 2006.

On July 29th 2010 the claimant attended a hospital appointment. The following day he attended work but was feeling unwell and as he could not locate a Manager, he informed a colleague that

he was unwell and was going home. He had used this procedure in the past. For the following 3 weeks the claimant was on annual leave. He returned to work on August 22nd 2010. The General Manager sent for him to speak to him. Another colleague (LM) was present. GM asked the claimant why he had not attended work on July 30th 2010 but was given no response. Further questions were asked but no response was given. The claimant was informed he was dismissed for gross misconduct as he had not attended work on Friday July 30th 2010. He had been previously refused twice for taking that day in question off. The claimant was advised to contact his union and his colleague (SM) did so of his behalf. The Union Representative contacted the Managing Director (MD) to appeal the decision.

The appeals meeting was set up for August 23rd 2010 but MD received a call to inform him that the claimant did not want to go ahead with the meeting. The decision to dismiss was upheld.

Respondent's Position:

There had been no previous problems with claimant. In July 2010 the claimant had requested July 29th 2010 off work, he was to commence annual leave on July 30th. He was refused on two occasions. He did not attend work that morning and had not used company procedure which was to contact a Manager and inform them of his absence. Two members of management were in situ on the day in question. Management became aware of the claimants' absence on July 30th. The claimant was asked to attend a meeting with GM and asked a number of questions regarding his absence on July 29th and lack of informing management of same. He gave no response to these questions. He was dismissed and was advised to contact his union. An appeal meeting with MD was requested but later cancelled.

MD contacted the claimant's colleague (SM) who informed him that the claimant had told him that he would be better off on the dole.

Claimant's Position:

The claimant had applied for 3 weeks leave in June / early July 2010. He said that he had not requested July 29th 2010 off. He received a letter from his doctor to attend the hospital and showed it to his Supervisor a week before the date in question. The claimant explained his medical condition to the Tribunal. He confirmed he had told a colleague in the car park on July 30th 2010 that he was unwell and was going home. He attended the disciplinary meeting and told the Tribunal that he had responded to questions asked of him. He was informed he was no longer needed by the respondent. He was not offered the opportunity to have anyone accompany him to the meeting. He contacted his colleague (SM) and told him he had been sacked.

The claimant's union applied to appeal the decision but later withdrew the appeal. SM informed him that if he took his P45 the union could do nothing for him. The claimant gave evidence of loss.

Determination:

The Tribunal carefully considered the evidence adduced and the submissions made. It is the respondents case that the claimant engaged in behaviour which amounted to gross misconduct and failed to implement a process of appeal. The parties agreed that the claimant was dismissed at a meeting of the 22nd August 2010 between the parties called by the respondent.

Having examined the process engaged in by the respondent which resulted in the claimants' dismissal. The Tribunal is satisfied that they carried out an investigation into the claimant without either informing him or giving him the opportunity to partake in it. The respondent also additionally failed to give any notice to the claimant of the meeting referred to or of its purpose. The respondent failed to inform him of his right to representation at this meeting and the respondent permitted the investigator to also act as disciplinarian.

It is therefore clear that there was present in this process, procedural defects. The tribunal finds and determines that these defects are of such consequence that they find the process sufficiently flawed and thus invalid. Since the claimants dismissal flowed from this process it follows that this dismissal was invalid and unfair and the Tribunal so determines.

The Tribunal considered the decision of the claimant to withdraw his appeal and finds that he did so on the advice of his trade union official whose assistance he had properly sought. It is found and determined that in so doing so that he acted fairly and reasonably and did not therefore contribute in any measure to his dismissal.

The Tribunal finally considered the efforts of the claimant to mitigate his loss and is satisfied that these did not reach a sufficiently sustained and reasonable standard and therefore finds that he contributed to his loss. The Tribunal awards the claimant the sum of € 18,000.00 in respect of his dismissal under the Unfair Dismissals Acts, 1977 to 2007. Additionally it finds and determines that the claimant was given no notice of his dismissal and awards the sum of € 800.00 in this reward in respect of his claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)