

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD569/2010

-Claimant

against

EMPLOYER

-Respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Hennessy
Mr F. Dorgan

heard this claim at Kilkenny on 26th September 2011
and 13th December 2011

Representation:

Claimant: Mr Ken Stafford, 7 Castletown Court,
Celbridge, Co Kildare

Respondent: Ms Deirdre Lynch Solicitor, Matheson Ormsby Prentice,
Solicitors, 70 Sir John Rogerson's Quay, Dublin 2

Background:

The respondent is a car hire company.

The claimant contends that he was dismissed on spurious grounds and that the procedures used were flawed and unfair. The Respondent took disciplinary action against him for matters that did not warrant such action. In one disciplinary process the company made use of spurious statements. It was clear at all three stages in the disciplinary process that management had made up their minds in advance and simply went through "the motions". The Respondent hindered and restricted his representation. The third matter in the sequence of warnings was a concoction that was taken out of sequence in order to bring about his dismissal.

The Respondent contends that the claimant was dismissed fairly for misconduct and in accordance with the Unfair Dismissals Acts, 1977 To 2007. The Respondent became aware that a customer telephone number had been altered on a rental contract at the end of the contract

in order to avoid a dissatisfied customer being contacted. Following an investigation that was chaired by the Group Rental Manager the claimant was invited to a disciplinary hearing on 10th September 2009. The claimant was advised of his right to be accompanied by a colleague or trade union representative at the hearing. The claimant expressed his desire to be accompanied by a representative (KS) and the respondent acceded to this request.

Unfortunately it became necessary to abort the disciplinary hearing held on 10th September

Respondent's case:

The Tribunal heard evidence from the Group Rental Manager (GRM). He explained that the Respondent was a car rental company and had twenty locations around the country. He worked in the Respondent for thirteen years. He was responsible for the disciplinary hearing regarding the claimant. The claimant was dismissed for a violation of business ethics; he changed a customer's telephone number to prevent the customer being contacted. Customers were contacted to ascertain an employee's performance.

The witness explained the ESQI which stands for enterprise service quality index, and the internal measures used in the company such as customer service, professionalism, growth and other matters.

He then explained that when a rental contract is opened with a customer it is called a "ticket". The ticket contains customer details so that the information is there to be referred to at all times. Reports are generated automatically.

The respondent found out that a telephone number on a ticket was incorrect. The claimant changed a telephone number to prevent the customer receiving a phone call. The number was changed to the branch telephone number. The change was made on 07th April 2009 and he became aware of this in the middle of May 2009. A letter dated 24th August 2009 was opened to the Tribunal.

He met the claimant on 10th September along with the Group Human Resource manager and the claimant's solicitor. Every time he asked the claimant questions he was interrupted by the claimant's solicitor so he could not get meaningful answers.

The claimant had previous warnings for tardiness and for throwing a pen at a female colleague.

The witness opened copious correspondence to the Tribunal. At one point there was a question as to the claimant's wellbeing. He was assessed and found that he was able to attend a disciplinary meeting. The claimant attended a disciplinary hearing on 16th November 2009

The claimant admitted that he changed the phone number. He changed it because he did not want the customer to get another phone call as the customer was "already irate". The claimant admitted that he changed the phone number.

A letter of dismissal issued to the claimant on 03rd December 2009. The GRM believed that he made a correct decision to dismiss the claimant.

During cross-examination on the second day of hearing the GRM confirmed that the company did not have signed statements from the employees interviewed regarding the incident with the pen which occurred on 5 May 2009 but he stated that the matter was discussed with each of the

witnesses. He did not believe there were any significant contradictions in the position of any of the witnesses; essentially the incident was recounted in the same way by the employees. A final written warning was issued for the pen-throwing incident on 8 June 2009. This was later amended when the claimant's appeal of the decision was heard on 28 July 2009.

The change of telephone number occurred on 7 April 2009. The GRM became aware of it during May when a monthly report of telephone changes was generated early in the month. He confirmed that the company did not send a letter about the matter until the 24 August 2009. He explained that he had dealt with the matter as soon as it had come to his attention. In the intervening period the report was with the business management department who did not realise the importance of the issue.

The GRM confirmed that the incident had arisen when incorrect type of fuel was put into a car which meant that the car could not be provided to the customer in question. The monthly report showed where the telephone number had been altered.

He outlined that a ticketing system is used for each rental and each ticket contains basic customer information. A ticket commences when the customer receives the rental car but in this particular instance the customer did not receive a car. However, the customer was still surveyed as the reservation was entered as a closed ticket on the system. It was correct that a ticket had been opened at the time of the booking but when the rental did not proceed the branch had the option to void the ticket. Instead the claimant had changed the customer's telephone number so that the customer would not be contacted.

It was the Managing Director's evidence that he heard the claimant's appeal of the decision to terminate his employment. The parties agreed that the appeal would be heard on 30 December 2009. The witness noted that prior to this appeal the claimant had appealed the warning provided to him regarding the incident with the pen but he had not appealed the warning relating to absenteeism.

On the 29 December 2009 the Managing Director received an e-mail from the claimant detailing the grounds of appeal. The claimant made the case that his representative was obstructed in the meeting but the Managing Director found that there was an "A to Z" process that had to be followed. Meetings were held as internal company procedures. The claimant also alleged bias but the Managing Director did not find that the claimant had been treated any differently to other employees in the same position.

However, having heard the appeal on 30 December 2009 he informed the claimant by letter dated 7 January 2010 that he was upholding the decision to dismiss him from his employment. The Managing Director stated that the respondent company is built on its customer service. He read and considered everything in the claimant's file. He had a number of grave concerns in relation to the claimant's position as Branch Manager. Trust is key to the respondent's brand and staff are taught to do the right thing by the customer. By changing the telephone number the claimant had prevented the customer from giving feedback and this was considered and treated as very serious within the company.

During cross-examination the Managing Director did not accept that the system would not permit the claimant to void the reservation.

He confirmed that he had also heard the appeal regarding the pen incident but admitted that he had not spoken directly to the three witnesses to this incident. He added that the fact itself was not in dispute as the claimant had admitted it had happened.

The Group Human Resources Manager for Ireland (herein after referred to as HRM) gave evidence that she attended the meetings in the role of scribe. The respondent company has a business ethics committee of which she is a member.

HRM outlined that the claimant had attended training sessions where key issues were outlined including the issue of changing telephone numbers on rental contracts. The training was to give branch managers a better understanding of certain issues. In addition to this training, HRM confirmed that at the time of induction the employee handbook, business ethics and business guidelines are outlined to employees.

During cross-examination HRM stated that in this particular instance it would have been better for the rental contract to have been voided, as voiding the reservation would mean that the information was still available but that the reservation was no longer “open.”

Claimant’s case:

It was the claimant’s evidence that a rental contract begins once a customer takes possession of a car and the ticket is issued as the customer receives the car. In the circumstances in question the claimant believed the customer had not entered a rental contract. A ticket was issued albeit incorrectly by one of the claimant’s colleagues who had also inputted the customer’s telephone number.

The claimant accepted that he had altered the customer’s telephone number but stated that his sole purpose in doing this was for the benefit of the company. As his colleague had created a ticket a rental contract was in place and activated. The claimant refuted the Managing Director’s evidence in relation to voiding a rental contract. The claimant stated that he could not void a rental contract once it had been completed. Only a reservation could be voided.

The claimant was aware that a telephone number report was generated each month. His sole purpose in changing the telephone number was that he thought that the customer should not get a telephone call regarding customer satisfaction as the customer would have to take possession of and return a car for a contract to be completed and only customers who complete a contract receive a customer service telephone call. The claimant did not consider that changing the telephone number for this reason could lead to disciplinary action and he stated that at the time he changed the telephone number he was unaware that he was on a final written warning regarding the pen incident as this had not yet been conveyed to him. The claimant gave evidence pertaining to loss and his efforts to mitigate the loss.

During cross-examination the claimant stated that he considered the first written warning regarding tardiness to be unfair but he did not appeal it. He did not think at the time that he would be the subject of any further disciplinary action. It was put to the claimant that he had previously stated that he had closed the ticket on the system. The claimant refuted this and stated that his colleague had closed it on the system. The claimant was attempting to rectify a mistake and he had attempted to explain this to the company. He did not hide anything as he was aware that the telephone number report was printed regularly and it was not his intention to falsify.

The claimant accepted that the reason initially advanced in the disciplinary process for changing the telephone number was that he wanted to prevent an irate customer from receiving a telephone call. He accepted that the survey feedback could impact on the opportunity for promotion.

Time off in lieu was allowed for under the terms of his contract. He did not take time off unless he had an entitlement to it. In relation to the pen incident the claimant stated that he did not throw the pen at his colleague but he did try to get her attention.

Determination:

Having considered the evidence adduced at the hearing the Tribunal accepts the claimant's reason as to why he changed a customer telephone number and finds that it was not unreasonable for the claimant to so do in the particular circumstances. The Tribunal notes that the claimant would have nothing to gain from changing the telephone number. The Tribunal is not satisfied that the claimant intended to throw the pen at another employee. The Tribunal finds that if the respondent was justified in disciplining the claimant regarding the changing of the customer telephone number, the pen-throwing incident and as regards his time-keeping the sanction of dismissal was disproportionate. The Tribunal further finds that the procedures used in effecting the dismissal of the claimant were flawed in particular the delay in first raising the matters with the claimant and in convening the disciplinary hearings. Accordingly, the claim under the *Unfair Dismissals Act 1977-2007* succeeds and the Tribunal awards the claimant compensation for unfair dismissal in the amount of €25,875.00.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____
(CHAIRMAN)