EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:	CASE NO.
EMPLOYEE	UD1130/2011

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Ryan

Members: Mr T. O'Sullivan
Ms A. Moore

heard this appeal at Monaghan on 8th October 2012

Representation:

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Appellant: Pierce O'Sullivan & Associates, Solicitors, 24 O'Neill Street, Carrickmacross, Co Monaghan

Respondent: Mr John Barry, Management Support Services (Ireland) Limited, The Courtyard, Hill Street, Dublin 1

This case came before the Tribunal by way of the employee (the appellant) appealing against the recommendation of the Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007 reference r 093277-ud-10/SR.

Respondent's case:

AM assistant plant manager gave evidence that during 2009 the company was fighting for survival. With the aid of Enterprise Ireland a "lean manufacturing" process began where better standards had to be achieved. Work practices were reviewed and continuous coaching/training became the norm. Coaching records were kept and corrective action taken with a view to continuous improvement. The appellant received a final written warning in October 2008 for clocking in a fellow employee. In May 2009 he didn't follow procedure while operating a forklift. The incident led to another warning, a copy of the warning was sent to his union official. In November 2009 he did refreshertraining with BD after he returned from sick leave. At a follow up meeting he was advised thatthere were still difficulties with his performance and he received a final written

warning. He wastold at the meeting that it was up to him to show improvement, if not, the company would have nooption but to terminate his employment. His reply was "fair enough".

In early December there were a number of incidents and the appellant showed no signs of improvement. Meetings were held on 8th and 9th December to discuss incidents that continued to occur. The respondent issued a letter to the appellant dated 10th December outlining the deficiencies in his performance and requesting explanations for his failures. A further meeting was held on 14th December, the appellant was advised to bring a representative and was asked to explain his lack of improvement. The appellant had no explanation and consequently was dismissed. He was told about his right to appeal at the meeting but did not do so.

Under cross examination MD stated that the appellant's sick record did not affect her decision to dismiss. The appellant was advised at all times of his right to appeal even though it was not in his letter of dismissal. Letters from the respondent were copied to the appellant's trade union and they made no representation on his behalf.

BD the production leader gave evidence that the appellant was a capable person but over time he developed an attitude. BD stated that he clearly advised the appellant of his need for improvement. BD did not think the appellant was over supervised and considered he had been given more than enough time to improve his performance.

Appellant's case:

The appellant ME stated that he was not the only one to get coaching notes, he always tried to do his best but everyone made mistakes. There was no opportunity to disagree with the coaching notes just accept them and sign them, that's the way it was. MD told him that they weren't interested in his opinion anyway. After he returned from sick leave in November he was told he should give up sport, he was needed in the factory.
Asked why he had not given any reply to the respondent's requests for explanations for his failures he stated that he felt the decision was already made so he didn't see the point. He did not ask his trade union to get involved and he did not bring a representative to the meetings. The appellant did not appeal the decision.

Determination:

The company operated a "coaching" system whereby employees were counselled/re-trained in situations where their performance was, or had become unsatisfactory. If the coaching did not lead to an improvement in the employee's performance then this could result in disciplinary action. While the appellant was dissatisfied with much of the coaching record/corrective action agreed, hedid not make a formal complaint through the grievance procedure as provided for in the concludingparagraph of the coaching record.

The appellant was given a number of written warnings ranging from

(a) Clocking in a work colleague in October 2008;
(b) Gross carelessness in operating a forklift in May 2009;
(c) Failure to show improvement in his performance in December 2009;
(d) Further incidents arising from his work in December 2009.

The claimant appealed none of these warnings.

The respondent's letter of the 10 th December 2009 has been referred to by the

appellants' representative as allowing a mere four days until 14th December as the time frame in which theappellant was expected to improve. This is not accurate. The appellant was asked to provide reasons for "these failures" (referred to in the letter of l0th December) and to explain why we (therespondent) should not now proceed to implement termination of employment proceedings. The appellant gave evidence to the Tribunal that he did not bother making any response.

The Tribunal is satisfied that the various company letters referred to above were copied to the Trade Union. The appellant gave evidence that met with his Union about this but again for whatever reason they did not make any representations on the claimant's behalf.

The Tribunal considered whether the company was in breach of its own disciplinary procedure, particularly the requirement at Stage 2 that a final warning will be given to any employee in thepresence of his representative but notes from the company's evidence and confirmed by theappellants own evidence at the hearing, that he did not want anybody accompanying him at anysuch meetings.

The appellant never invoked the Grievance procedure, which he was entitled to do, under the company union Agreement.

The Tribunal in satisfied that although the respondents letter dated 14th December 2009, dismissing the appellant did not advise him that he had a right to appeal, it was made clear to him at the meeting held on the same day that he had a right of appeal.

Having considered the totality of the evidence the Tribunal upholds the Rights Commissioner's decision.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)