

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD1184/2011

against
EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr N. Russell
Members: Mr J. Browne
Ms S. Kelly

heard this claim at Waterford on 12th July 2012

Representation:

Claimant:

The claimant in person

Respondent:

Neil J Breheny & Co, Solicitors, 4 Canada Street, Waterford

Respondent's case

The respondent is a manufacturer of sports kits and the claimant was employed as a machinist from 1st November 1999 until she was dismissed for gross misconduct on 10th May 2010.

On the 26th January 2010 the claimant was issued with a letter confirming that she had received a verbal warning in respect of the following.

1. Unsatisfactory and disrespectful attitude to work, management and other employees.
2. Refusal to carry out a reasonable work instruction (i.e. attend a meeting to discuss issues relating to point 1 above)

This warning was to remain on her file for a period of six months.

There was a written complaint against the claimant, signed by six of her colleagues, also dated 26th January 2010. It was not made clear to the Tribunal whether the verbal warning was as a result of this complaint or whether the complaint was subsequent to the issue of this warning.

However, notwithstanding this, the respondent called in an independent third party to carry out an investigation into the allegations made against the claimant.

This independent investigation found that the claimant was guilty of gross misconduct and taking this into account the respondent decided to dismiss the claimant. A meeting took place on 22nd April 2010 between representatives of the respondent and the claimant with her union representative. A letter of dismissal had already been drafted by the respondent, with the intention of handing this to the claimant at this meeting. However, when the union representative expressed surprise at this approach and indicated that he expected the meeting to be a negotiation, the respondent withdrew the dismissal and instead placed the claimant on two weeks suspension, with pay.

The respondent expected the claimant's representative to come back to them within those two weeks but he never did and on the 10th May 2010 the respondent wrote to the claimant confirming her dismissal, with immediate effect. This letter also advised the claimant of her right to appeal this decision internally. However, the claimant did not appeal the decision to dismiss her.

The witness for the respondent, who made the decision to dismiss the claimant, told the Tribunal.

“In the interest of the wider staff. I believed the findings of the report reflected the actual situation. I believed her behaviour was leading to stress for others and conflict. I had everybody's interest to consider. I think it was appropriate. I had never dismissed anyone before. I stand over the decision. No opportunity was given to me to take any other approach”.

Claimant's case

The basis of the claimant's case was that the respondent did not follow fair procedures in regard to her dismissal.

The claimant had no prior knowledge of the investigation taking place and was not given an opportunity to have her union representative present when she was interviewed in relation to this investigation. She did not agree with the findings of this investigation and told the respondent so. However she was not given an opportunity to challenge the findings with her union representative present.

Prior to the meeting of 22nd April 2010 the decision to dismiss her had already been taken and even though she was not dismissed then she was suspended for two weeks. The decision was not rescinded and was merely deferred to 10th May 2010.

The Claimant expected the respondent to review the situation during the period of her suspension and to get back to her before any further decision was taken. However, there was no review carried out and instead she received a letter confirming the decision, already taken on or before 22nd April 2010, to dismiss her.

The claimant did not appeal the decision to dismiss her as this appeal was to be heard by another director of the company and she saw no point in this as “they all think the same”.

Determination

It is the opinion of the Tribunal that the disciplinary process followed by the respondent in this instance was seriously flawed to the extent that the Tribunal finds the claimant was unfairly dismissed.

At the conclusion of the independent investigation into the complaints against the claimant, the respondent sought to meet with the claimant to discuss the matter. However, at no point was the claimant informed that she was being requested to attend a disciplinary meeting. The claimant attended the meeting on 22nd April 2010 in the company of her union representative. Mr. M for the respondent advised the Tribunal that the claimant's representative was surprised when Mr. M opened the meeting by informing the claimant that she was dismissed. Mr. M indicated to the Tribunal that the claimant's union representative advised him that he thought the purpose of the meeting was to negotiate. Indeed, as it transpired, the meeting became a negotiation which terminated on the basis that the claimant would be suspended with pay, for two weeks.

There was a lack of clarity on the part of both parties as to what precisely was to happen following the meeting of the 22nd April 2010. It seems that the intention was that the claimant could make a written submission.

The letter of the 22nd April 2010 to the claimant clearly indicates that the respondent had arrived at a decision to dismiss, having considered the investigative report and before any disciplinary meeting.

In those circumstances, the Tribunal is not satisfied that the claimant received the fair hearing guaranteed to her by the respondent's disciplinary process.

In arriving at a figure for compensation, the Tribunal has given weight to the fact that the claimant did not exhaust the internal appeals process and might have been more active in her pursuit of alternative employment and consequently mitigated her losses.

The Tribunal awards the claimant €7,500.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)