**EMPLOYMENT APPEALS TRIBUNAL**

| **CLAIM(S) OF:** | **CASE NO.** |
|---|---|
| EMPLOYEE | UD1954/2010 |
| ***-claimant*** | MN1888/2010 |

against
EMPLOYER
***- respondent***
under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal
(Division of Tribunal)
Chairman: Mr M. Gilvarry
Members: Mr. D. Morrison
Mr T. Gill

heard this claim at Sligo on 28th February 2012
and 16th May 2012

**Representation:**

Claimant: Aine Kilfeather, Kilfeather Keyes, Solicitors,
Bank Buildings, Hyde Bridge, O'Connell Bridge, Sligo

Respondent: Bryan Armstrong, Hegarty Armstrong, Solicitors,
Top Floor, Millennium House, Stephen Street, Sligo

**Respondent's Case:**
The Managing Director (B) gave evidence. He explained the respondent company was involved in the maintenance and repair of light aircraft. He gave extensive information of his qualifications and experience in the aircraft maintenance business. The aircraft maintenance business was heavily regulated and safety was of the utmost importance.

The claimant had worked in nearby premises as an aircraft technician and the witness knew him. A position arose in the respondent business and B offered it to the claimant. The claimant commenced employment as an EASA Part M Subpart F Manager. B worked closely with the claimant to improve his skills.

In January 2010 he observed very little work was being done. On January 18th 2010 he wrote to the claimant stating that he felt the claimant was not performing his managerial responsibility to *"a reasonable level of satisfaction".* It also stated that it was a verbal warning. The claimant was not impressed receiving the letter.

On March 2nd 2010 he again had to write to the claimant regarding two serious incidents. It stated:

*"I must highlight the fact that your conduct and competence in relation to the improper timing of magnetos on a Cirrus SR22 aircraft on February 8th 2010 was completely unacceptable.*

*I must also highlight the fact that your conduct and competence in relation to the improper installation of a fuel system O-ring on a Cessna 152 aircraft on February 25th 2010 was completely unacceptable.*

*Due to the serious safety implications of any one of the above issues I have no alternative but to inform you that you are hereby dismissed from your position as a senior aircraft mechanic from (respondent). This letter serves as three weeks notice commencing Friday March 5th 2010."*

The claimant was solely responsible for signing off on the timing of the magnetos and did so, and the signing sheet was produced by the witness. He was put on restrictions and not allowed to certify. The claimant's mistake in the improper installation of the O-ring was a gross error and was not acceptable from a mechanic with any training whatsoever. Either of these errors could have had extremely serious consequences. He felt he had no alternative but to dismiss the claimant.

The claimant was dismissed on March 12th 2010.

**Cross-examination:**

The witness agreed that he was the person who gave the claimant training. Prior to the February incident regarding the magnetos the claimant had not made mistakes up until that point. The claimant had attended a course in Scotland and passed the course. The claimant is qualified under EU licence and he had a USA mechanics licence; he demonstrated to the USA FA that he was competent with piston engines. It was put to the witness that the claimant would say he was not put on restrictions contrary to what he would say. The witness explained that the claimant missed a fuel filter check and he was only allowed to do basic checks and was not allowed to certify any work/ sign out aircraft.

He did not have the dismissal letter at the meeting he had it at his desk. He did not tell the claimant that he could appeal.

The witness said that he did not dispute that the claimant had an impeccable record however he explained that the claimant himself admitted that he made two possibly catastrophic errors on the aircraft.

**Claimant's case:**

The Tribunal heard evidence from the claimant. He did an Air Corps apprenticeship from 1992 for four years in avionics. He transferred to helicopters and engines in 1997. He stayed in the Air Corps up to 2001 when his nine years were up. He also did night classes to obtain civilian qualifications. In 2002 he joined a helicopter company. He did a course on Sikorsky helicopters. He worked as a line engineer and was then made supervisor. He obtained a European maintenance licence for aircraft and helicopters for turbine engines. He had "no category for piston engine fixed aircraft engines".

He got to know the owner (B) of the respondent when he set up the respondent business. B had asked him to do duplicate inspections in his hangar. B had been advised by the IAA to recruit someone with part 1, 4 and 5 experience. Part 1, 4 and 5 experience are more of a stringent experience levels than others and B was looking to recruit a person of this calibre. They met and talked and settled on a salary of €45,000.00. He took a substantial drop in salary; his motivation for joining was that he was looking for a change. He found his previous job stressful

He worked in aviation for twenty years. He was never subject to disciplinary procedures or a maintenance error investigation.

He did tell B that he had no experience whatsoever with piston engines. B assured him that it would not be a problem that he would show him.

After a while with the respondent another person (DS) joined. B told him that DS was the hanger manager and was second in charge if he B was not there. The claimant had no problem with this as DS had eminently more experience and he would learn a lot from DS.

The claimant's role was Sub Part Manager. He had to ensure work was up to a certain standard. To look after paperwork, to ensure maintenance manuals were revised, usually annually.

In 2008 he went to the USA to do FAA AMP exams. Two systems were involved the USA systems and European systems. Both were required to work on US aircraft. He had no qualification in piston engines so he went to Scotland to sit an exam. He obtained a piston category in September 2009. This does not however entitle him to certification privileges.

In Christmas 2009 they moved to a new hangar. A white board was placed on the wall. People's names and days of the week were on the board. He and DS wrote job numbers on the board. He was OK with the board but B was adamant that they put lots of jobs on the board and he was not ok with that. He felt that the workers would "cherry pick the jobs" as opposed to "getting the jobs".

He had a good working relationship with B up until Christmas 2009. He got a pay rise in December 2009. In January 2010 problems arose. He got a verbal warning on 18th January 2010 and it was the first verbal warning that he ever got. There was an IAA inspection that day and they had short notice of the inspection. He showed the inspector around and then the inspector left. Later on B returned and he told B about the inspection. Later on as he was about to go home B called him to the office and gave him a verbal warning letter. It seemed it was because there were not enough jobs on the white board and lack of jobs done. He was shocked and he asked B how long the warning lasted and B said he did not know.

There was an incident on 08th February 2010 involving magnetos. The claimant explained that you have to fit magnetos to the engine and then to "time" them to ensure they fire the spark plugs. He had never done this before unsupervised; he had assisted in doing this. He timed the unit to the best of his ability and in accordance with the maintenance guide. He asked DS to check the work as he had never done this before unsupervised. DS checked the work and told him that it was fine. B took the aircraft for a run and B returned and said he had a concern about the cylinder head temperature readings (CHT). DS and B and the claimant discussed the situation. DS said he was happy that the timing was correct and DS and B concluded that no further action was needed and no further action was taken.

The owner of the aircraft collected the plane. He returned 15 minutes later and was not happy with the CHT readings. The timing was checked and was found to be out. The timing was fixed and the aircraft rectified. There was an air of relief in the hangar that there had not been a catastrophe. DS and B and the claimant discussed the matter and B re-iterated the importance of the magneto timing. B gave the claimant and DS a copy of an article about this. B said that all Magneto timings would get duplicate inspections. B told them that all timings were to be independently checked. B did not speak to him on a one-to-one basis about the incident. He was not aware of any disciplinary action against him regarding the incident. The claimant worked on as normal after that.

On 18th and 19th February B was on leave and DS was out sick. The claimant was the senior person on the hangar floor. No aircraft were certified during this time. B returned and the claimant asked him had he a good time off. B told him that he had and that he had competent people working on the hangar floor.

There was an incident on 25th February. He was working on an aircraft. Every fifty hours the Fuel filter has to be disassembled and inspected. The claimant explained in detail to the Tribunal the methodology of this task. The claimant did a standard procedure and a leak check. The aircraft was in the hangar overnight and there were no leaks visible.

The aircraft went to Knock airport. Four days later B had to go to Knock airport. B returned and showed the claimant a damaged part. The claimant accepted responsibility, that he had accidently damaged the part when he installed it and caused a leak. The claimant accepted it was not good enough. He was angry with himself.

He arrived to work the next day and spoke to B and to DS. He spoke to them in the office and accepted responsibility and apologised to DS as DS had certified the aircraft and released the aircraft. He apologised to B for the damage to the company reputation and for the time he spent going to Knock. DS accepted the apology and B "kind of" accepted.

The claimant returned to work. At 4.50 pm B called him to the office. B told him that they had a problem. B moved an envelope across the desk. The claimant thought that it was another warning letter and B told him that it was a dismissal. The claimant read the letter. The claimant asked him to re-consider but he would not.

The next day he returned to work and did not have a conversation with B. At some point in time, on or about 9th March 2010, B told him that he did not want him working on the aircraft and to take annual leave.

He was not advised that he could appeal the dismissal.

**Determination:**

The Tribunal carefully considered the evidence adduced and submissions made.

The Tribunal preferred the evidence of the respondent in this case. The fact that two such serious errors were made by the claimant were substantial grounds for the dismissal of the claimant. However the Tribunal were not satisfied that fair procedures were followed by the respondent in the course of disciplining and dismissing the claimant. The absence of a disciplinary hearing where the claimant could make representations was unfair.

Nonetheless the Tribunal was satisfied that the dismissal was, apart from procedural failings, substantively justified and the claimant therefore contributed to an extremely large extent to his own dismissal.

Taking into account the contribution of the claimant the Tribunal awards the claimant the sum of €2,000.00, as compensation, having regard to all the circumstances, under the Unfair Dismissals Acts, 1977 To 2007.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)