

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
Employee

CASE NO.
UD1863/2009
MN1764/2009

-claimant

WT777/2009

against
EMPLOYER

-respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley
Members: Mr J. Killian
Mr D. Mc Evoy

heard this claim at Killarney on 27th July 2010
and 7th December 2010

Representation:

Claimant: ,

Respondent:

Background:

The respondent is a railway line company and the claimant worked as an on-board steward on the train.

Respondent's case:

The Tribunal heard evidence from the HR and training manageress. She explained that she received an e-mail dated 22nd March 2009 from the route manager (also known as JE). The e-mail was opened to the Tribunal. In essence it detailed an altercation that occurred between the claimant and another employee (hereafter C). The claimant and the other employee are on-board stewards.

The claimant himself did not make a complaint the information that she received was from the route manager and the claimant's supervisor. A medical certificate was sent in for C.

The claimant was rostered to work on Sunday 22nd March 2009 and he did work. She contacted the claimant on 24th March and she requested that he call to her office. She met the claimant

and JE was present to take notes. It was a fact finding interview and not a disciplinary interview. The notes that JE took at the meeting were opened to the Tribunal and she agreed that the notes reflected the meeting.

She pointed out to the claimant that C sustained a broken nose and that the matter was serious. The claimant did not elaborate on any private misunderstanding.

A ticket checker for Irish Rail had written a report of the incident and this was opened to the Tribunal. The report stated that C was driving away from the train station. C was driving from the station which was well light to a car park across from the station that was not well light.

There was an altercation between C and the claimant. And at the interview the claimant told them a number of times that he pushed C. However the claimant admitted that he punched C.

The HR manageress in giving evidence explained that the claimant was suspended with full pay whilst the matter was investigated. This was because it was evidence that a physical altercation had taken place.

She then passed the file on to TMcD who was the route manager as she had no decision making part in the process. She did sign letters but that was only as part of her administrative role.

A letter of dismissal dated 13th May 2009 was sent to the claimant.

A letter dated 18th May 2009 was opened to the Tribunal. The letter was from the claimant's solicitor and they wished to appeal the decision to dismiss the claimant.

The Tribunal heard evidence from TMcD the route manager. He became involved in the matter when the HR and training manageress gave him the file and asked him to conduct the disciplinary process. The witness gave evidence as to the disciplinary process and the subsequent dismissal of the claimant.

The Tribunal heard extensive evidence from the sales and marketing manageress who heard the claimant's appeal of his dismissal. In concluding her evidence the witness explained that there were many inconsistencies in the claimant's story. It was clear that there had been an incident. It was too big a risk for the company and the general public and a risk to the contract they had.

Claimant's case:

The claimant gave evidence to the Tribunal. He explained that he was the senior person in work on a specific day (on or about the weekend of Saturday 21st March 2009). He explained that C refused to co-operate with him. He reported this to JE the manager.

He spoke to C and C told him that he "would beat him up". He tried to calm C down. He showed C a text on his phone that came from the manager and C "punched/ damaged" the phone.

When the train arrived at the next station he spoke to a supervisor who advised him to take a note of what happened. He wrote things down on 21st March 2009.

Later that evening at Tralee train station he looked for the station manager but no one was there.

He went to the car park and put his bag in the car boot. He noticed car windows “misted over”. He drove over to another car park. C arrived “from nowhere” and C pressed him against the car. The claimant explained that C is younger than he is. The claimant tried to run around his car. He did not try to open the car door as C would have caught him from behind.

In cross-examination it was put to the claimant that he was not in fear there was no threat to his safety on the train regards C. The claimant replied that it was for management to decide, that whether C was on the train or not was not his decision. It was put to the claimant that there were inconsistencies regarding his account regard his phone being broken. The claimant reiterated that his phone was broken. It was put to him that he punched C on the train and the claimant disagreed with this. The claimant agreed when put to him that he had no injuries (from an altercation).

Determination:

The evidence points that the claimant was guilty of gross misconduct. The claimant made no attempt to leave the scene and he had pre-arranged to meet the other protagonist. The claimant experienced the company internal procedure and an appeals procedure. On a full and detailed consideration the claimant was subjected to a disciplinary process and of the claimant’s own evidence the Tribunal determine that the decision to dismiss the claimant was justified and the dismissal was fair. Furthermore, the claimant has not given convincing or cogent evidence as to attempts to mitigate his loss

Accordingly, the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

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

The claim under the Organisation of Working Time Act, 1997 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)

