EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF: CASE NO.
EMPLOYEE ***-Claimant***

UD175/2011

against
EMPLOYER ***-Respondent***

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms O. Madden B.L.

Members: Mr F. Cunneen
Mr N. Dowling

heard this claim at Dublin on 3rd May 2012

Representation:

Claimant: Ms. Audrey Coen B.L. instructed by John O'Leary & Co, Solicitors, Millennium House, Main Street, Tallaght, Dublin 24

Respondent: REP

The determination of the Tribunal was as follows:

Dismissal as a fact was not in dispute between the parties. The claimant was employed as a warehouse operative with the respondent company from October 2000 until he was dismissed in October 2010. The respondent operates a wholesale business supplying builder providers and other outlets. The company guarantees a next day service to its customers. It is a small company with approximately ten employees.

A director of the company gave evidence that his role in the company is to manage the daily operations of the company and the staff. Both the director and the claimant gave evidence that there was a good working relationship between them for the first nine years of the claimant's employment.

It was the respondent's case that in or around May or June 2010 the claimant approached the director and enquired about a redundancy payment; as he was thinking of becoming a driver instructor. The director thought that it was in or around this time that he spoke to staff about the possibility of implementing a three-day week. The director informed the claimant that there was no redundancy situation in relation to his position. The claimant then enquired about a gesture of goodwill given his length of service.

It was the claimant's evidence that in or around June 2010 he did approach the director and asked if his position was "safe" as he had noticed a decrease in business from the beginning of the year. He was informed by the director that there was a possibility that a three-day week would be implemented. The claimant offered to work a three-day week, should such reduced hours be implemented, as he was aware that his colleague in the warehouse had more financial commitments than he had.

It was in light of this discussion that the claimant enquired about a redundancy payment but the director informed him that the company could not afford to make a redundancy payment to him. The claimant first mentioned the driving instructor course at this point as he was thinking of his future should he lose his position with the respondent. A goodwill gesture towards the cost of the course was discussed on a few occasions and the claimant was informed that €2,000 was the best he could expect to receive; as the company could not afford to pay him redundancy. The claimant did not accept this offer as he needed his position.

It was the director's evidence that from in or around the time the claimant enquired about a redundancy payment, he began to notice that the claimant had lost interest in his position and mistakes started to occur. The director first spoke to the claimant during June and July about his performance. It was in or around this time the director sought advice from a human resources consultant on the issue. Subsequently, he issued a verbal warning to the claimant on the 5th August 2010.

It was the claimant's evidence that the director did not speak to him about any errors or performance issues during the months of May, June or July. Indeed the claimant did not recall receiving a verbal warning from the director at the beginning of August 2010.

It was the director's evidence that the claimant was subsequently issued with a further verbal warning during September 2010. A letter dated the 23rd September 2010 followed these warnings. The letter outlined the two incidents for which the claimant had received verbal warnings. The first incident occurred when the claimant picked and dispatched the wrong goods to a builder provider. The director had told the claimant that the goods had to be sent that night but despite this the goods were still on the respondent's premises the following morning. The claimant did offer to bring the goods to the builder provider himself but this would have meant he was absent from the warehouse. The respondent company had to incur the cost of a courier to get the goods to the customer. The second incident occurred when the claimant sent incorrect locks to another customer. The letter of the 23rd September 2010 stated that, *"..this letter is an official final warning and any further incidents will give me no further choice but to let you go from the business."* The director stated that there were further issues but he had not documented them. The claimant refuted there were previous issues.

It was the claimant's evidence that he was shocked to receive a final written warning as it was the first notification to him that there was any issue with his performance. He informed the director that he was verbally refusing the letter, as another colleague who checked the orders after the claimant had signed off that they were correct.

The director stated in evidence that during week commencing 11th October 2010 three serious incidents occurred which lead to him director dismissing the claimant. The incidents were outlined in a letter dated 15th October 2010 as goods not being loaded for delivery to a customer and on two occasions that week the claimant had sent goods to the wrong location.

It was the claimant's evidence that the three mistakes which lead to his dismissal all happened within one week and he was therefore shocked to receive the letter of dismissal. The claimant signed the letter in order to obtain his notice and holiday monies owing. While the claimant accepted the incidents occurred he did raise the issue again that another employee checks the orders and had signed off that the orders were correct. The claimant's mistake could have been corrected if this employee had identified the errors. He was unsure if this colleague had also been disciplined.

During cross-examination the claimant outlined that the working relationship had deteriorated in the last five months of his employment. The claimant attributed this partly to the fact that his position changed in August 2010. Prior to this, the claimant had worked for nine years in the section of the warehouse that dealt with the main orders but during August 2010 he was placed on postal orders. The claimant thought he was being demoted and he raised this with the director. The director told him that the reason his role was changed was to give the claimant's colleague a break from the postal orders. The claimant began to suffer an illness from the time of August 2010.

Given the previous warning that had issued to the claimant in September 2010, the director reached a decision to terminate the claimant's employment. He met with the claimant and provided him with the letter of dismissal dated 15th October 2010. He asked the claimant tosign the letter if he agreed with its contents. The claimant admitted to making the errors andsigned the letter. The claimant was replaced in his position. The claimant gave evidence ofloss.

During cross-examination it was put to the director that while the disciplinary process is outlined within the employee handbook; the section detailing the termination of employment states that an employee's employment will be terminated in circumstances where the employee is dismissed as a result of a disciplinary offence. However, such offences or examples of such offences were not contained within the handbook. The director acknowledged this but stated that all employees are aware that it was serious to send goods to an incorrect location.

Determination:

The Tribunal carefully considered the evidence adduced by both parties. It is evident that the respondent company did not utilise fair procedures in dismissing the claimant from his position, which he had held for ten years.

Although the claimant referred to an illness which developed during August 2010, the Tribunal was not presented with medical evidence in relation to this issue. The Tribunal must consider the detrimental effect of the claimant's performance on the company and the fact that he contributed to the dismissal. In such circumstances the Tribunal finds the appropriate award to be compensation in the sum of €16,000 under the Unfair Dismissals Acts, 1977 to 2007

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)