

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE

CASE NO.  
UD1378/2011

against

EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. G. Hanlon

Members: Mr. N. Ormond  
Mr. D. Thomas

heard this claim in Dublin on 27 November 2012

Representation:

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Claimant(s):

Ms. Bernadette Thornton, SIPTU,  
Membership Information & Support Centre, Liberty Hall, Dublin 1

Respondent(s):

Ms. Mary Paula Guinness BL instructed by  
Smyth O'Brien Hegarty, Solicitors,  
24 Lower Abbey Street, Dublin 1

The determination of the Tribunal was as follows:-

It was alleged that the claimant, a boner with a meat-processing company, was unfairly dismissed after an employment from February 2007 to May 2011. It was contended that the claimant's dismissal had been unnecessary in that the claimant had been dismissed for taking a photograph of a "pile-up" of work that had built up while he was on a comfort break and that he had taken the photograph to prove that his supervisor was not getting "cover" for his work while he was on a comfort break.

The respondent's case was that the claimant had been fairly dismissed for misconduct following

a full disciplinary investigation, hearing and appeal hearing. It was contended that the claimant had been afforded fair procedures including the right to representation and that there had been an opportunity to call evidence, cross-examine witnesses and make submissions in his defence. There was an Irish co-ordinator who had fluent Portuguese and with whom grievances could be raised by the claimant or by any other Brazilian employee (as had, in fact, been done by the claimant in the past regarding other issues). The incident that led to the claimant's dismissal had taken place in the respondent's boning hall where unauthorised phones were not permitted especially as the respondent took so seriously a food-hygiene policy of which the claimant had been fully informed in writing. The respondent had made a point of making Portuguese copies of company documentation available to its Brazilian employees.

Giving sworn testimony at the Tribunal hearing, MK (the respondent's general manager) said that the respondent processed meat and that the claimant, a Brazilian, had received a contract. The Tribunal was furnished with English and Portuguese copies of the contract. The contract included a section on disciplinary measures up to dismissal. There was also an employee handbook which had sections on disciplinary procedures and serious misconduct. The handbook also stated that only company-authorised mobile phones were to be used on the respondent's premises and, specifically, that mobile phones with cameras were not to be used on company premises. (The respondent took both hygiene and confidentiality extremely seriously not least because it was liable to unannounced food hygiene audits and did not want to risk losing any of its major customers.) It was further stated in the handbook's section on mobile phones that any employee using a camera phone to photograph company property would be treated as having committed serious misconduct and that appropriate disciplinary action would be taken.

MK told the Tribunal that he had not taken the dismissal decision lightly but the claimant (who had already received a final written warning) had not denied having an unauthorised phone in the boning hall in contravention of explicit written instructions which he had received.

According to MK, the respondent had a policy of zero tolerance in respect of any potential contamination by harmful bacteria. Hands had to be washed and chemically sanitised. Meat packers were more sanitised than hospitals. The respondent had blue-chip customers who could audit without notice.

A phone, even if inadvertently brought on site, could cause cross-contamination. There was a very important health-and-safety risk with a phone. Also, the respondent was careful about the fact that a camera-phone could produce a breach of product confidentiality in respect of raw material. The claimant had received induction and training.

The Tribunal was furnished with copies of the respondent's very detailed group hygiene policy which had a section on personal belongings in which it was stated that personal property should be kept to a minimum and emphasised that any germs could multiply and lead to food-borne disease.

Giving sworn testimony, NK (the respondent's group human resources manager) confirmed that she had heard the claimant's appeal against his dismissal. She upheld the dismissal decision but varied it by deciding that he should be paid his notice such that he had incurred a post-dismissal loss of only three weeks' pay before finding new employment at no less gross weekly pay than he had earned with the respondent.

The Tribunal was furnished with appeal documentation in both English and Portuguese. It was

accepted that pile-ups could occur but NK did not accept that there had been a need for the claimant to have had his mobile phone with him (in breach of written instructions). The claimant could have complained to management without photographic evidence. NK concluded that the claimant had shown a lack of respect for the respondent and its (written) rules.

In 2008 there had been an incident when the claimant had spat in the boning hall whereupon the respondent had followed up with a refresher in hygiene training in that the claimant was taken into a room and told about hygiene again.

Giving sworn testimony, RK (a boning hall manager with the respondent) said that he had been the claimant's manager. According to RK, there had been "an unwritten rule" that only two employees could take a comfort break at any one time. The respondent would get cover when it could. Six or eight pieces of meat could pile up in six minutes. RK would stop the production line or put someone else on it. He did not recall the claimant saying anything to him about not being covered.

Giving sworn testimony, the claimant stated that on a working day in late March 2011 he had spoken to MM (a supervisor with the respondent) and said that he wanted to use a toilet. The claimant told the Tribunal that he was initially ignored but that, when he repeated the request, he was told that he could go. He asked MM to get cover for his absence.

When the claimant returned to his work-station he found that meat had piled up on his counter and had to clear the work himself. He received no cover or help. His phone was in his pocket. He took it out and took a photograph as proof of the build-up of work.

The claimant stated that previously he had sometimes got cover and sometimes not. He admitted that he had not submitted a written grievance. He cited his Brazilian nationality and his wish for a better command of English. He told the Tribunal that he had just spoken verbally to the respondent's management (rather than raising a written grievance).

It was admitted by the claimant that he had received a final warning (in English and Portuguese) which he had not appealed. He had previously (when he was very angry) told a supervisor to shut up. He told the Tribunal that he would have less than one minute to work on a piece of meat (before having to work on another one) and that he did not get cover when he needed it. He conceded that it had been his fault that he had not appealed his final warning and that he had told the respondent that he had taken a photograph as proof of the amount of meat that had piled up at his work-station.

Asked at the Tribunal hearing if he had understood that he could be dismissed for having had the phone, the claimant replied that he had the employee handbook but said that there were so many pages in it and questioned how he could recall all that was in it.

### **Determination:**

Having considered the evidence, the Tribunal was unanimous in finding that the claim under the Unfair Dismissals Acts, 1977 to 2007, fails because there was a clear breach of procedures by the claimant who had known that he should not have had his phone with him at the material

time.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)