

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *claimant*

UD538/2011
RP749/2011

Against

EMPLOYER - *respondent*

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr. A. O'Mara

Mr N. Dowling

heard this claim at Trim on 15th January 2013

Representation:

Claimant(s) : In person

Respondent(s) : In person

Determination

The respondent (AV) explained to the Tribunal that he was not involved in the disciplinary process leading to the dismissal of the claimant. He referred to correspondence between the claimant and various managers in the company. A letter dated the 19 January 2010 he explained was confirmation of a verbal warning issued to the claimant regarding the claimant's aggressive attitude to other employees.

Letters dated the 16 and 17 August 2010 signed by (MD) the HR manager referenced poor timekeeping and leaving keys for the diesel tank on general display.

A further letter dated the 1 September 2010 outlined a series of issues and an invitation to attend a meeting. The letter indicated that the claimant should attend with SM and MD on

behalf of the employer. AV could not confirm when this meeting took place and no minutes of the meeting were available but a letter to the claimant dated the 13 September 2010 he believed were the minutes and evidence of the meeting taking place.

The respondent received a parking fine for a vehicle which the claimant was driving at the time and also received a complaint from an unnamed individual regarding the claimant parking in a disabled car space. In an email dated the 28 October 2010 SM requests MD to bring the claimant in for a disciplinary. AV could not confirm if a meeting took place and relies on a letter to the claimant dated the 29 October 2010 as evidence of a meeting. That letter referenced a meeting with MD and also makes reference to a written warning of the 19 January 2010 and three further interim warnings for non-performance of work and poor time keeping. The letter which was signed by AD a director of the respondent company terminated the claimant's employment on grounds of offering violence upon a fellow member of staff. AV accepted that the claimant did not engage in actual violence.

An appeal of the decision was included in the letter however the claimant never availed of the appeal process. AV is satisfied the respondent followed correct procedures in dismissing the claimant as set out in the employee handbook

The claimant (LK) worked as Security/Store Officer with the respondent company from February 2008 to the end of October 2010. In his role as security officer other employees did not like him much. In order to carry out his duties correctly he regularly had verbal aggressive exchanges with other employees. He often arrived for his shift up to forty five minutes early and accepted that he left early on occasion but never more than five to ten minutes. From time to time the clocking system was not working correctly however; he also accepted that he forgot to clock out on occasion. The claimant recalled meeting with MD on the issues including unsatisfactory work performance but was never given a verbal warning.

On the parking allegations the claimant acknowledged he had received a parking fine while using the respondent's vehicle which he paid. He had regular meetings with MD and believes the reference to offering violence arose as a result of an exchange of words between himself and DMC. He never used physical violence or threatened to use violence towards the other employee. The claimant could not recall what date his last meeting with MD took place. At the meeting with MD there was no mention of his employment being terminated. He had returned to work and received a telephone call from AD who informed him his employment was terminated. He was asked to call the following day and MD handed him the termination letter dated the 29 October 2010. The claimant did not appeal the decision as he did not understand the process.

The Tribunal carefully considered the evidence adduced both verbal and written. The respondent accepted that they dismissed the claimant and the onus is therefore upon them to establish that such dismissal was fair. There was no evidence adduced in relation to the claim under the Redundancy Payment Acts, 1967 to 2007.

The Tribunal has considered

- a) the investigative process conducted
- b) the subsequent disciplinary meeting immediately following which the claimant was dismissed
- c) the failure of the claimant to appeal his dismissal

Incorporated in the investigation of the claimant was the issue at various stages of verbal and written warnings following examinations of the claimant's behaviour. It is found and determined that the respondents in the course of this process did not in all cases provide the claimant with the opportunity to engage with witnesses whose unchallenged evidence they relied upon in reaching an adverse finding against the claimant. The Tribunal is additionally not satisfied that the matters which were investigated and which were the subject matter of the warnings referred to in their entirety could fairly and reasonably be designated as breaches of the respondent's written code of conduct. It is therefore found and determined that the investigation carried out by the respondent was flawed.

Following the investigation the respondent invited the claimant to a disciplinary meeting following which they contacted and met with a witness for the purpose of the reviewing and commenting upon the claimant's evidence to the disciplinary meeting referred to. Immediately following this second meeting the claimant was dismissed. It is found and determined that the claimant was thus denied the opportunity to either engage with or respond to this witness before he was dismissed and that the disciplinary process engaged in by the respondent was therefore flawed.

In relation to the failure of the claimant to appeal his dismissal it is noted that he at no time engaged in any appeal process be it in respect of the various warnings issued or otherwise. The Tribunal is satisfied in the circumstances that it would have been reasonable and appropriate for him to have been given the opportunity to obtain independent advice. It is therefore determined that the failure of the claimant to appeal his dismissal did not in any way contribute to it.

The Tribunal finds and determines that the flaws in the investigative and disciplinary process referred to are of sufficient significance so as to render the claimant's dismissal unfair and therefore determines that the claimant was unfairly dismissed. The Tribunal awards the claimant €20,000 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)