

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE –*claimant*

CASE NO.
UD1370/2011

against
EMPLOYER –*respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Lucey

Members: Mr. P. Casey
Mr J. Flavin

heard this claim at Limerick on 2nd April 2013

Representation:

Claimant:

Respondent:

Respondent's Case

The respondent is involved in the manufacturing industry; the claimant's role was that of planning and production scheduling. There are agreed (with the resident Union) disciplinary and grievance procedures in place. As the claimant was in a supervisory position he was aware of the procedures in place. The claimant had been employed by the respondent for 25 years.

An incident took place on the 19th of January 2009 which resulted in the claimant receiving a final written warning on the 29th of January 2009, active for 1 year. Similar problems had arisen in 2000 and 2002. It stated that the claimant's actions warranted dismissal but due to his long service, his commitment to seek help and some personal issues highlighted at the disciplinary meeting, a more lenient sanction of a final written warning would be issued. This warning was not appealed. The claimant gave a commitment to seek help for his problems and the respondent agreed to facilitate the claimant by giving him time off, sending him to the company doctor and highlighting the employee assistance programme in place. The claimant attended the company doctor and was under his supervision, initially on a monthly basis but due to his progress this was changed to 3 monthly check-ups.

An incident occurred on Monday the 18th the January 2010 where the claimant could not be located at work that morning. The Operations Manager called the claimant to a meeting that

afternoon to discover why the claimant had left work without clocking out, as the same thing had occurred the previous Monday. The claimant said he had had to step out for 15 minutes for personal reasons. During the course of the meeting the operations manager noticed that the claimant was slurring his words and he could smell alcohol. He asked the claimant if he had been drinking, the claimant said he had not but subsequently admitted that he had been drinking when he was asked to go to hospital take an alcohol check. The claimant was sent home from work. The respondent attempted to organise a disciplinary meeting but the claimant's wife called the following morning to say the claimant was sick.

The claimant then entered a residential rehab facility as of the 22nd of January 2010 to seek help for his problems. The claimant was paid throughout the duration of his absence. During the course of the claimant's rehab he wrote to the respondent detailing his progress, the fact that he had 'turned things around' and appealed for leniency.

The claimant completed his rehab programme and attended the disciplinary meeting on the 19th of April 2010. He accepted responsibility for his actions and undertook to engage fully in the aftercare programme to ensure he stayed on track. The claimant looked 'shook' so the respondent decided to meet with him again a week later. His brother had accompanied him to the meeting. The claimant attended the company doctor who reported to the respondent on the 27th of April that the claimant was fit to return to work.

The respondent took the company doctors report, the claimant's commitment to engage in the aftercare programme and his initiative in attending the rehab programme into consideration when deciding on a sanction of 2 months suspension without pay and a final written warning. The written warning stipulated that the claimant must continue in the aftercare programme and could be subject to random alcohol testing. There was no expiry date on this warning. The claimant did not appeal this decision.

In September 2010 the claimant sought advice on an unrelated personal problem from the respondent. He was again sent to the company doctor for professional assistance. The company doctor reported him to be well and capable of working.

On Wednesday the 23rd of February 2011 the claimant rang the Operations Manager to say he was sick. The call ended abruptly and he thought the claimant sounded drunk as he was slurring his words so tried to call him back but the claimant did not answer. The respondent was not aware that the claimant drove to work, decided he was not fit to attend work so went home.

A disciplinary meeting was called for the following day the 24th of April 2011. The claimant declined to have a representative present on his behalf but it is policy to always offer representation. The claimant was asked,

1. If he was back drinking
2. Is he continuing with his aftercare programme

The claimant admitted that he had been drinking the night before but was not drunk when he phoned in sick. He admitted that he was drinking again. The claimant was informed that he was being suspended pending an investigation and to allow the respondent time to consider the case.

The respondent reflected on the entire situation. The claimant had given them a commitment that he would continue with the aftercare programme. As 'he went back on the drink' he broke this commitment and called the respondent's trust in him into question. For health and safety reasons someone cannot be drunk at work. The respondent also requires their employees to be

diligent and conscientious.

The claimant was called to a meeting the following day, Friday the 25th of April 2011. The respondent had decided to dismiss the claimant as they no longer had any trust or confidence in him and they had already given him two chances with the final written warnings. Stage 4 of the disciplinary procedure states that,

'failure to show the required improvements which will be clearly specified in writing under stage 3 (final written warning) will result in the employee being dismissed.'

The claimant was informed that the respondent had no option but to dismiss him. The claimant asked about a reference, the respondent informed him that they couldn't lie but that they would do their best for him. There was never an issue with the claimant's work. The respondent said to the claimant, 'if you want you can resign but it will make your appeal harder.' The claimant said he would not be appealing his dismissal and wanted to resign. The claimant queried his Social Welfare entitlements and what his work colleagues would be told.

The claimant was instructed to return on Monday the 28th of April to collect a letter for Social Welfare, to submit his resignation letter and collect his minimum notice entitlement. The claimant was concerned about his reputation; he was not pressured into resigning. The claimant never asked for a break in the proceedings. The claimant handed in the resignation letter on Monday; he had the weekend to seek advice and choose to continue with the resignation. The respondent offered to continue to pay his health insurance and employee assistance programme until the policy expiry.

The claimant's behaviour was unacceptable and warranted dismissal for every incident, but the entire process was drawn out as the respondent was 'trying to do its best' for the claimant. The eventual dismissal was an accumulation of the events of the previous two years.

Claimant's Case

The claimant had some personal problems that led to him receiving the final written warnings. He does not dispute these. His work performance was always good and at his latest performance review, 4 days before the final incident, he was told he was doing a good job.

On the 23rd of February 2011 the claimant drove to work. He realised he 'wasn't in a fit state to go into work' so went home and rang in sick. He was aware that he was on a final written warning but did not believe that ringing in sick would result in his dismissal.

On the 24th of February 2011, the claimant went to work as normal and was called to a disciplinary meeting. He was not given notice of the disciplinary meeting, he was informed that he could have a representative but not informed that he could seek advice. He was suspended at this meeting. He was aware that he would be told the result the following day.

On the 25th of February 2011 at a meeting the claimant was told that, 'we're terminating your contract.' The claimant suggested that he resign as an alternative as he did not want the stigma attached to 'being sacked,' he was not pressured into this – he instigated the resignation. The claimant submitted his resignation letter the following Monday, the respondent had warned him that he could not appeal the decision if he resigned.

The claimant gave evidence of his loss and his attempts to mitigate his loss.

The claimant accepts that the respondent did try and help him with his issues and paid him while he was in rehab. The claimant did give them an undertaking that he would engage in the aftercare programme and attend AA meetings. He did admit to drinking in February 2011 and realises he should have gone back to the doctor. The respondent offered to continue to pay his health insurance and for rehab after he left employment. The claimant was aware from the warning letters that failure to keep up his commitments to the company could lead to his dismissal but did not think that 'ringing in sick' warranted dismissal. The claimant did not get the opportunity to present his case or seek advice.

Determination

The Tribunal acknowledges that both parties were genuine and showed decency in presenting their case and throughout the employment relationship. Considering all the circumstances the Tribunal finds that the claim succeeds, as the claimant's dismissal was procedurally unfair. The Tribunal orders that the claimant should be re-engaged as per section 7 (1)(b) of the Unfair Dismissals Act 1977, which states;

'Where an employee is dismissed and the dismissal is an unfair dismissal, the employee shall be entitled to redress consisting of whichever of the following the rights commissioner, the Tribunal or the Circuit Court, as the case may be, considers appropriate having regard to all the circumstances:

(b) re-engagement by the employer of the employee either in the position which he held immediately before his dismissal or in a different position which would be reasonably suitable for him on such terms and conditions as are reasonable having regard to all the circumstances'.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)