

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**  
EMPLOYEE

*- claimant*

**CASE NO.**  
UD433/2011  
MN443/2011

against

EMPLOYER

*- respondent*

EMPLOYER

*- respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr R. Prole  
Mr. O. Nulty

heard this claim at Drogheda on 11<sup>th</sup> December 2012  
and 19<sup>th</sup> March 2013

#### **Representation:**

Claimant:

Respondent:

The determination of the Tribunal was as follows:-

#### **Respondent's Case:**

The HR manager gave evidence. The claimant had worked as a team leader in the sanitation department. He had worked the night shift 10.00pm to 6.00am in the fish plant. A crew of 5 reported directly to him.

On 26<sup>th</sup> September 2010 ML and CH complained to the production manager about the claimant's behaviour at a golf weekend organised by the golf society. The production manager has since been made redundant. When the HR manager read the complaints she decided to suspend the claimant on full pay pending an investigation.

At a preliminary investigation meeting AG said that on the Friday night the 6 people on the trip met in the hotel bar for a drink. When AG went outside for a cigarette the claimant came out too. The claimant became agitated and threatened to break AG's legs. The claimant apologised and the two

men shook hands. It was also reported that after a few drinks the claimant told ML that she had great legs. ML took the remark as a joke.

The HR manager decided to call the claimant to an investigation meeting. The claimant's solicitor wrote back saying that he had advised the claimant not to attend. The claimant was not entitled to bring a legal representative to an investigation meeting. The meeting was rescheduled.

At the investigation meeting the claimant was informed that ML and CH complained about his behaviour on the Friday night of the golf trip. ML had complained about him commenting on her legs. CH complained that he had rubbed her back and legs. The claimant did not remember being intimidating. After the meeting the HR manager reread the statements and decided to call the claimant to a disciplinary meeting.

The disciplinary meeting was held on 10<sup>th</sup> November 2010. The claimant was given the opportunity to have a work colleague with him. The claimant made no comment when the first statement was read to him. But the claimant accepted that he had been aggressive towards AG. The claimant was called to a disciplinary close out meeting on 12<sup>th</sup> November 2010. The allegations of sexual harassment were serious. In the view of the HR manager the claimant's behaviour was unacceptable and amounted to gross misconduct. The production manager did not make the decision to dismiss lightly.

The claimant appealed the decision to dismiss him to the Plant Manager.

On the second day of the hearing the Plant Manager gave evidence. The claimant submitted a letter dated November 16<sup>th</sup> 2010 to appeal the decision to dismiss him. The appeal hearing took place on December 1<sup>st</sup> 2010. The claimant attended alone although he was asked if he wished to have a representative with him. The allegations concerning the incidents and comments made at the golf society weekend were put to him. The claimant felt everyone thought he was guilty and that the decision to dismiss him was made before the investigation meeting. The decision to dismiss the claimant was upheld as the respondent felt the incidents were very serious and the respondent had a duty of care to their employees.

### **Claimant's Case:**

The claimant gave evidence. In 2007 he had an altercation regarding work with a colleague in a local public house on a weekend night. The colleague was unfit to work the following day and the claimant was given a final written warning that would remain on his file for a period of 12 months.

He had sustained an injury at work and was absent for some time and took anti-depressants. He returned to work and was moved to another section of the premises. He worked nights as a Process Co-ordinator in the sanitation section. He worked, and supervised AG, CH and ML amongst others.

There was a golf society within the company. The respondent made some financial contribution to it. The claimant had been vice-captain and captain of the society. The society had about 10 outings a year. A weekend trip was arranged to the hotel KN in Trim. Six staff signed up, four males and two females – the claimant, AG, CH, ML, PC and EC. The claimant travelled and shared a room with EC. They travelled on Friday and had a round of golf. The others arrived around 5 p.m. They met up, had some food and drinks, checked into their rooms and met up later that evening for some

drinks.

AG spoke to him about the round of golf they had played. They also discussed work. He could not recall if the conversation had got heated or if he has said he, the claimant, would break AG's legs but told the Tribunal that he would accept what AG had said. They were long life friends. The claimant apologised to AG and they shook hands.

Later that evening he was sitting with CH and ML. There was a lot of slugging going on. He told the Tribunal that he had put his arm around CH and may have touched her leg. He told ML he had bought new clothes for their night out the following evening and asked had she. When put to him he said that he had not made any inappropriate comment concerning her chest. It was not his style. He went to bed around 3.30 am.

The following morning four of them went to play a round of golf. CH did not make any comment of the previous evening. All six went to dinner that evening.

On the Monday evening AG asked to speak to him. He told him what ML and CH were saying about his inappropriate behaviour and comments made on Friday evening. AG said the two ladies felt uncomfortable. He continued to work with AG, ML and CH. One and a half weeks later he received a call from HR to attend a meeting on 5<sup>th</sup> November 2010. The allegations were put to him. He felt it was a very structured meeting He felt very uncomfortable and felt the decision to dismiss him was already made. A disciplinary close out meeting was held on 12<sup>th</sup> November 2010. He was informed on that day he was dismissed but did have the right to appeal the decision. He lodged his appeal on 16<sup>th</sup> November 2010. He received his P60 and P45 on 25<sup>th</sup> November 2010. The appeal hearing was held on 1<sup>st</sup> December 2010.

He was shocked and hurt to be dismissed. It affected his health and had to be prescribed medication. He had been unable to secure a job but had attended a number of FAS courses.

### **Determination:**

The Tribunal has carefully considered the evidence adduced in the course of this two-day hearing.

On the 15<sup>th</sup> October 2010 6 staff members from the respondent company attended a pre-organised golf weekend in the KN Hotel in Trim Co. Meath. Much was made of the nature of the weekend and whether or not it could be described as an outing which was organised through the workplace or whether it had simply been organised by a gathering of persons who happened to work in the respondents workplace. There can be no doubt that the company was happy to, in a small way, fund the running of a golfing society in the workplace. Every year a number of events took place with this society and it is quite acceptable that the company would expect their employees gathered at social events would behave with propriety and the Tribunal cannot find this expectation to be unreasonable.

Even if there was no reason whatsoever to believe this event was anything at all to do with the respondent company. The Tribunal does not find it unreasonable in the circumstances where serious allegations have been made that the company faced with the prospect of either ignoring such allegations because they sprung from a no-work related event or taking these allegations seriously and investigating then in circumstances where the "alleged" victims have asserted that the matters have given rise to performance and personal issues in the workplace and the company was under a

real obligation to deal with these allegations once made.

At the heart of this investigation were the allegations made by two female co-employees to the effect that the claimant in a clear state of drunkenness had made inappropriate comments, gestures and physical contact in the course of the Friday evening of the weekend social already outlined. The Tribunal accepts that these incidents cannot be excused on grounds of extreme drunkenness or the mishandling of medication. There can be no doubt that the claimant behaved very inappropriately and had caused consternation and upset to the two ladies in question. The Tribunal does not accept that either lady made up their statements and finds as a fact that the matters complained of were done.

The Tribunal therefore finds that the respondent company were entitled to investigate the allegations raised and were correct in their believing the substance of the complaint once investigated.

In addition to the allegations raised, the respondent company also gave consideration to the statement of one AG who described a conversation with the claimant in which the claimant had become heated. This conversation was unrelated to the allegations raised by the two ladies and only got drawn into the investigation as the content of the conversation when overheard by and alluded to by one of the two complainant ladies who had brought the serious grievances to the attention of the respondent company.

The Tribunal cannot accept that the content of the conversation between AG and the claimant should ever have become such a dominant part in the investigation conducted. This conversation was never taken to heart by AG and his interview with the management tended to show sympathy for the claimant who had acted inappropriately and needed to have the error of his ways pointed out. The Tribunal notes that AG stopped short of demanding that the claimant should lose his job and the Tribunal notes that both the complainants made a point that they had no wish to see the claimant lose his job over this incident and their experience of the claimant in Trim was the exception and not the rule.

The Tribunal finds the generosity of the two complainants in this regard to be a significant factor. The ladies were clear that they had no previous difficulties with the claimant and whilst they alluded to other “fellas on the floor” having had run ins with him they had no personal difficulties with him.

It is in this context that the Tribunal must ask whether it was reasonable of the company to have so little regard to the complainants’ desire not to have the claimant dismissed. No consideration was given to the possibility of retaining the claimant (an employee of 16 years) as an employee of the respondent company. There is no doubt that the company could have given consideration to a demotion or a transfer of the claimant which would have been seen as punishment enough. It was open to Plant Manager to explore the alternative arrangements which might have been made to sanction the claimant and it was open to the Plant Manager to address this with the two complainants in this regard.

On balance, the Tribunal accepts that the sanction outweighed the guilty act in circumstances where the victims were not being vindictive in what they wanted. The Tribunal also accepts that the claimant contributed to his situation and in the circumstances the Tribunal awards the sum of € 13,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

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

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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