

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE,

CASE NO.

UD1025/2011

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Wallace

Members: Mr W. O'Carroll
Mr J. Flavin

heard this appeal at Limerick on 21st February 2013

Representation:

Appellant

Respondent:

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an employee (appellant) appealing the recommendation of a Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007, ref: r-095539-ud-10.

Respondent's case:

EC production manager gave evidence that the appellant was a team leader in a manufacturing plant. He had responsibility for four people on his team, their punctuality, targets, time sheets etc. Production was done as one process but a main extractor broke down and it became a two part process. A drop in productivity was expected but not anything like what had occurred over the weekend. EC said that he couldn't explain why it was so bad. Monday morning he looked at the results and examined what may have occurred. On looking at video footage it was evident that there was no production for the last 50 minutes of the shift. This was the shift supervised by the appellant. EC reported the matter to his Operations Director Mr C and an investigation meeting took place. Everyone confirmed they were taking long breaks.

The appellant was summoned to a meeting on 12th March 2010. He stated that when targets were achieved production stopped and that when targets were achieved people went to the canteen and took longer breaks. The respondent also asked about an additional duty he was asked to carry out

(help colleagues on a Flap winder) but he said “it wasn’t his job”.

A disciplinary meeting took place on 19th March. The appellant was advised of the seriousness of the situation. The appellant’s explanations were deemed unsatisfactory and he was dismissed. The decision was made by both EC and Mr C

Under cross examination EC stated that the other parties involved all received final written warnings. The appellant already had a final written warning and therefore was dismissed. Asked if the appellant was asked to leave the plant immediately after the meeting of the 19th he said “not to his recollection”.

PS the managing director gave evidence that he heard the appeal of the appellant. He looked for new information or reasons people were absent from the machine. He also looked to see if the additional tasks requested of the appellant were unreasonable. He stated that it was an enormous step to dismiss the appellant and something he did with great reluctance but there was a history of warnings and nothing new had come to light except for the appellant to say he went to the warehouse for a period of time.

Claimant’s case:

The claimant PS gave evidence that he only became aware that there was a problem when called to the first meeting on 12th March. He didn’t think he was told that he could have representation and was never advised that his job was in jeopardy. PS stated that he had never been given targets, if there were targets he was never told about them. He didn’t take longer breaks than allowed and didn’t get a copy of his contract in Polish (his native language). There was no failure on his part to manage extended breaks and stated that he was there all the time except for breaks. He did refuse to do the extra duty that was requested by his supervisor because he felt it was not his job.

Under cross examination the appellant said that he was given a contract and hand-book, asked if the hand-book was in Polish he said that he “wasn’t sure”. Asked again he said “yes he did get it” but was during his shift and he had to give it back. Asked if he was asked to leave the building on the 19th March he said he thought it was that day but wasn’t sure. He stated that he had never seen other team leaders perform the extra duty that he had been asked to do. PS said that he only mentioned the warehouse at the appeal stage because he didn’t get a chance to raise it at the earlier meetings.

Determination:

The Tribunal has carefully considered all of the evidence together with the documentation handed in during the hearing and the submissions furnished during the hearing. While there seemed to have been a conflict of evidence the Tribunal noted the honesty with which the respondent presented their evidence and preferred it to that of the appellant.

Accordingly, the Tribunal upholds the recommendation of the Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007.

The appeal under the Unfair Dismissal Acts 1997 to 2007 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

