

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
CASE NO.
EMPLOYEE - *claimant*

UD1927/2011

Against

EMPLOYER- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Mr. P. Casey
Mr O. Wills

heard this claim at Cork on 30th April 2013

Representation:

Claimant(s) :

Respondent(s) :

Summary of Evidence

This application arises out of the dismissal of the claimant by the respondent for gross misconduct. Evidence was heard from a number of executives from the respondent company. The respondent company is a medical device manufacturing company and the general manager told the Tribunal that it came to his attention that the claimant had been advising other workers as to how to defraud the company by taking time off with full pay by feigning injury and sickness. The claimant was suspended on full pay so that the matter could be investigated.

The general manager appointed an investigator who spoke to a number of fellow workers who made statements to her that she in turn presented to the financial controller of the company.

The financial controller gave evidence that he was the decision maker in relation to the matter and on the 28th of July 2011 at 11.00 a.m. the financial controller met with the claimant in the presence of a companion of his, an interpreter and one other representative of the firm. Having heard from the claimant the meeting was adjourned to the afternoon for the financial controller to consider the matter. At 2 p.m., a

further meeting was held at which the claimant was dismissed for gross misconduct. Subsequently a letter which was dated the same day as the meeting, the 28th of July 2011 was sent to the claimant in which the following appears;

“The company has carried out a full investigation into the allegations and it was put to you at the meeting that your behaviour was an act of gross misconduct and represented fraudulent activity.

You were given a full opportunity to respond prior to a decision being made. You were also informed at the start of the meeting that termination of your employment could result should the case against you be upheld.

Having due regard to all the circumstances and the seriousness of the incidents I regret to inform you that the decision of the company is to terminate your employment with immediate effect. This is by reason of gross misconduct”.

There followed an appeal process. The appeal’s officer, a recently employed executive of the company reviewed the procedure and satisfied himself that the procedure adopted in the dismissal was in accordance with the company’s written disciplinary procedure. He did not go into the substance of the complaints. He confirmed the dismissal.

The claimant gave evidence on his own behalf. He had at all times denied that he had acted fraudulently or encouraged others to act fraudulently. He indicated that the issue arose when his father who was also an employee of the company, who had been out sick with an injury came to the factory premises on the day of the claimant’s suspension, and requested the managing director to sign a Social Welfare form which the managing director refused to sign. There were words between his father and the managing director and he believes that this is what gave rise to his dismissal.

He said that he asked to confront the witnesses who had made statements against him but he was never permitted to do so. He told the Tribunal that he is now on job seekers allowance. He said that he was very upset by his dismissal. He had loved his job and he was a perfectionist in carrying out his work. He is now suffering considerable hardship in supporting his young family.

Determination

The substance of the employer’s case arises from the statements made by four work colleagues of the claimant during the course of the investigation into the complaints made against him. These statements were translated from Polish into English and the most significant allegations appear to be the following;

“ “A” said that he was going in and out of the canteen and there were six people around the table, he said he heard (the claimant) telling people to go to the doctor and claim money from the company”.

““A” said that (the claimant) was instructing them to come to me and to tell me that their hands were sore and also to go to a private doctor and get a certificate of the injury”.

“He returned later in the day to add that (the claimant) said that if you wanted to take money out of the company they can go to the company doctor and say that it is work related and get paid and this is the way to take money from the company”.

The Tribunal are of the view that the claimant may have engaged in inappropriate banter with colleagues. In the circumstances it was not unreasonable for the company to investigate the matter.

The substance of the complaints however did not give rise to circumstances which the Tribunal feels justified the employee’s dismissal. The claimant did not have an opportunity to confront the persons making the accusations (nor did the Tribunal have the opportunity of hearing from the individuals who made the complaints).

Furthermore, the statements were informally interpreted from Polish, and it is difficult for the Tribunal to rely on their accuracy or veracity without actually hearing the complaints.

In all the circumstances the Tribunal are unanimously satisfied that the claimant in this case was unfairly dismissed.

The claimant liked his job and he was praised in his capacity as an employee by the company. The financial controller of the company has told the Tribunal that the company is still recruiting.

In all the circumstances the Tribunal takes the view that the appropriate remedy in this case is that of re-engagement.

Consequently having considered the evidence adduced at the hearing the Tribunal finds that the claimant having been unfairly dismissed, is entitled to be re-engaged under the provisions of the Unfair Dismissals Acts 1977 to 2007 and orders that he should be re-engaged within seven days of receipt by the parties of this determination.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)