

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE

*-claimant*

CASE NO.  
UD1283/2011

against

EMPLOYER

*-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly B.L.

Members: Mr. D. Moore  
Mr. G. Whyte

heard this claim at Dublin on 21st November 2012  
and 19th April 2013

#### Representation:

Claimant:

Respondent:

#### Summary of evidence:

Dismissal as a fact was not in dispute between the parties. The claimant was employed in the respondent's distribution centre driving a Long Legged Operating platform (hereinafter referred to as LLOP).

It was the respondent's case that the claimant was dismissed for wilful failure to comply with the company's health and safety regulations and to comply with responsibilities as an employee under the Health, Safety and Welfare at Work Act 2005. Details of the training provided to the claimant were opened to the Tribunal. The Section Manager gave evidence that on 28<sup>th</sup> July 2010 he observed the claimant driving a LLOP at speed when driving around a corner in the warehouse. This resulted in an empty cage coming off the LLOP which then struck protective racking. The Section Manager approached the claimant in order to provide him with corrective driving feedback and to issue a health and safety penalty point. The Section Manager had the option of issuing either a minor or a serious penalty point for the incident and he intended to issue a serious penalty point. The claimant became aggressive towards the Section Manager. He disputed the corrective feedback and disagreed with the Section Manager. The Section Manager requested the claimant's health and safety card to apply the penalty point but the claimant said he did not have one and became more irate. Each staff member is given a health and safety card when they complete their health and safety training and they are required to carry this card with them at all times. The Section Manager again asked the

claimant for the health and safety card. The claimant again became irate and drove off without giving this card to the manager. The Section Manager reported the matter to the Shift Manager.

During cross-examination it was put to the Section Manager that the claimant had told him he did not have the card on his person. The Section Manager replied that the card was visible on the claimant's person and he disputed that the claimant had informed him that this was an old health and safety card. In later answering questions from the Tribunal, the Section Manager accepted that as the company has a computerised system to synchronise points he could have applied the health and safety penalty points to the claimant's old card.

It was put to the Section Manager that the speed of the LLOPs was increased by the respondent the previous month to increase productivity. The Section Manager confirmed the speed was increased but stated that the drivers were provided with training on the new speed. It was put to the Section Manager that the claimant had not received this training as he was absent on sick leave.

The Shift Manager gave evidence that the claimant worked on his team. The claimant had come to his attention on a number of occasions in relation to health and safety issues. The claimant had already reached stage 5 of the disciplinary process for health and safety issues having received a final written warning and three days unpaid suspension. The claimant received a final written warning in October 2009 for rectifying scratches on a LLOP without reporting the marks to the company. The claimant had not caused the damage but his failure to report it constituted serious misconduct. The claimant received the period of unpaid suspension in December 2009 for incidents of negligence which resulted in him receiving penalty points on his health and safety card.

Following the reporting of the incident by the Section Manager the Shift Manager met with the claimant on 28<sup>th</sup> July 2010 and informed the claimant that a decision had been made to place him on suspension pending further investigation.

The Depot Manager gave evidence that health and safety is of paramount importance in the warehouse. By letter dated 28<sup>th</sup> July 2010 the claimant was asked to attend a meeting the following day. During the meeting the claimant stated that the incident was caused due to a fault with the LLOP. This claim was investigated by an engineer from an outside company who confirmed there was no fault with the LLOP. The claimant also said that there was a witness in the aisle who would verify his version of events but that he could not provide the name of this person as they were reluctant to give a statement. The Depot Manager held a number of interviews as part of the investigation and on numerous occasions he asked the claimant for the name of the person he said would support his version of events. The company even checked about staff located in that area of the warehouse and interviewed a hygiene operative as a result but this person did not observe the incident.

The Depot Manager concluded from the investigation that the company could progress to the disciplinary process and disciplinary meetings were held with the claimant. At the meeting on 6<sup>th</sup> August 2010 the claimant was informed that he was being dismissed summarily from his employment. A letter of dismissal dated 12<sup>th</sup> August 2010 issued to the claimant.

The Tribunal heard evidence from a section manager (PS) from the respondent. The witness opened his written statement to the Tribunal. He had been asked by the operations manager to write the statement.

The Tribunal heard evidence from another witness from the respondent. the witness opened his written statement to the Tribunal.

The Tribunal heard evidence from the head of distribution (CF). The witness conducted the claimant's appeal of his dismissal. He gave copious evidence as to the appeal and the resulting upholding of the dismissal.

The Tribunal heard evidence from the claimant. The claimant told the Tribunal that the workers only had one minute to check the LLOPs before their shift started. He did not notice a scratch on the LLOP. He did notice a scratch on the machine after he had his second break. He was not trying to hide the mark; He painted over the marks in front of managers. Also other employees openly painted over marks on the LLOPs. He painted over the marks in front of managers.

The claimant was asked if he collided with an object with the LLOP and he answered that if he had an accident he would report it (He denied colliding with anything).

He explained that during the alleged incident he saw other machines approaching and he stopped. He then hand signalled. Then the cage on the LLOP "got loose and lightly hit the racks". The Section Manager approached him and did not explain anything to him. The Section Manager asked him for his health and safety card and he told him that he did not have his card. The Section Manager told him that his card was around his neck and he told the manager that it was an old card and that he could go and get his new card if he wished. He was not asked to stop work.

Later he went to the canteen and a manager arrived and told him that he was suspended.

The claimant maintained that he was dismissed because his contract is more lucrative than most and also because he was a shop steward.

### **Determination:**

The claimant was dismissed by letter dated 12<sup>th</sup> August 2010:

"On 28<sup>th</sup> July 2010, you were involved in an incident whereby health and safety rules were not followed due to negligence on your behalf. The type of behaviour is in breach of the Company's Health and Safety regulations.

This behaviour is extremely serious and cannot be tolerated under any circumstances; it constitutes serious misconduct and falls under the following:

*"Wilful failure to comply with company Safety and Health regulations and to comply with responsibilities as an employee under the Health, Safety and Welfare at work Act 2005"*

The dismissal followed a thorough investigation and disciplinary meeting. the claimant does not agree with the content of the witness statements taken during the investigation. He stated that he had a witness to refute the allegations; however he refused to disclose the identity of that witness to anyone other than his union representative. That witness was not subpoenaed to the hearing either. The claimant was given the opportunity to be accompanied at all of the

meetings. He was given copies of all of the witness statements. He did exercise his right of appeal. The Tribunal are satisfied that the appeal was conducted in a thorough, objective and fair way.

In all of the circumstances the Tribunal find that the claimant's dismissal was fair.

The claim under the Unfair Dismissals Acts, 1977 To 2007, is dismissed.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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