

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE  
*-claimant*

CASE NO.  
UD2263/2010

against  
EMPLOYER,  
*-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr L. Ó Catháin  
Members: Mr D. Hegarty  
Mr J. Flavin

heard this claim at Cork on 6th March 2012  
and 19th June 2012

Representation:  
Claimant:

Respondent:

#### **Background:**

The respondent produces medical products and the claimant worked there as a machine operator. The claimant contends that he was unfairly dismissed by the respondent and the respondent did not follow the rules of fair procedures and natural justice. The respondent contends that the claimant was fairly dismissed and substantial grounds existed that justified his dismissal. The claimant was dismissed following a serious incident in which it was alleged by fellow employees that he behaved in an inappropriate way towards them. The claimant was suspended (without prejudice) on full pay to permit an investigation, he failed to co-operate with the investigation and thwarted the respondent's investigation into the matter for a period of several months by failing or refusing to attend meetings and medical appointments. The respondent conducted a full and fair investigation into the matters and concluded that the claimant behaved in an aggressive manner towards other employees and that he failed to co-operate with the company and this amounted to insubordination.

#### **Respondent's case:**

The Tribunal heard evidence from the HR director. She explained that the claimant was

dismissed for insubordination and for failure to follow procedures. There was an incident on 3<sup>rd</sup> December 2009 and a disciplinary investigation meeting was called on four occasions. The claimant was invited to attend and he did not attend. They also asked the claimant to attend the company doctor which he did not. They asked the claimant to write a submission to them and he did not. The claimant was dismissed at a meeting on 2<sup>nd</sup> June 2010. The claimant had been on full pay. The investigation took that long because of the claimant was uncooperative.

The Tribunal heard evidence from the engineering and technical services manager. He was a member of the disciplinary panel. He was part of the decision making team he was not part of the investigation team. On review of the evidence and review of the behaviour the claimant did not reach what was expected of an employee. He blatantly refused to attend meetings. He did not send sick certs in and there was an absence of complying with annual leave policies. The claimant was asked at a meeting if he had anything further response and he had no comment to add. The claimant was not dismissed because of the incident on 3<sup>rd</sup> December 2009; he was dismissed because of failure to follow procedures.

The Tribunal heard evidence from the HR consultant. She reported to the HR director and was not involved in the decision to dismiss. Her job was to “investigate the incident”.

It was put to the respondent representative/ witness if the respondent’s position was that the only reason for the claimant’s dismissal was because of his behaviour during the process and it was agreed that this was the case.

#### **Claimant’s case:**

The Tribunal heard evidence from the claimant. He had worked in the company for thirteen years.

He attended a meeting organised by his team leader to explain changes to the pay roll. He understood what the company was doing but he did not know why. It was said to him that it had been explained to him previously and he replied “yeah and we still don’t know why”. His team leader pushed his hand down and pointed his finger into his chest. He was shocked and confused. The next day his team leader told him that someone was looking for him. He was brought to a meeting with HR and another person. He was told that he had been aggressive at the meeting and was being suspended with pay. Outside the meeting room was his team leader and security waiting. He had to go to get his glasses so he went to his machine and he was followed by security. He told them that he had no transport so he waited at the front door with the team leader and the security persons. His team leader asked him for his security badge. The claimant found this degrading.

Regarding the meeting arranged for 10<sup>th</sup> December, he could not go as he was “preparing (for it) and was confused” and he did not understand what was going on. He was stressed and humiliated and went to his doctor. He was given a prescription for a week’s tablets. He could not attend the meeting because he was very sick and because his solicitor had not got the information that he needed. It was the same for the meeting due to be held on the 20<sup>th</sup> December. He was not well for all of the meetings, his solicitor told him that he had not got all of the information and he was confused.

Regarding the medical appointments he could not attend those because he had no transport. He was not able to contact the HR office so he left a voice mail to say that he could not attend. He

did finally attend a meeting because his solicitor told him that he had all the information. His doctor did not want him to go but he wanted to go.

Regarding the company's position that he failed to engage with the company, the claimant denied this he explained 'I engaged in everything, I left phone calls for everything. I got my solicitor, not once did I ignore'.

The claimant gave evidence as to his loss.

**Determination:**

The Tribunal determines that the claimant was unfairly dismissed. However, the claimant contributed to his dismissal; he refused to attend medical appointments and frustrated the respondent's attempts to investigate the matter. The Tribunal is of the view that the claimant and/or his solicitor should have engaged in the investigative process at an earlier stage.

The Tribunal accordingly, and for the above reasons finds in favour of the claimant and makes an award of four weeks gross pay i.e. the sum of €3,340.40, under the Unfair Dismissals Acts, 1977 To 2007.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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



