

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

against

Employer

under

CASE NO.

UD1148/2008

- *claimant*

- *respondent*

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr G. Mc Auliffe
Mr J. Moore

heard this claim at Drogheda on 25th March 2009

Representation:

Claimant(s) : Ms. Marie Hayes, Dundalk Resource Centre, 30 Clanbrassil Street, Dundalk, Co.
Louth

Respondent(s) : XXXX.

The determination of the Tribunal was as follows:-

Respondent's Case:

The Senior Sales person gave evidence. The claimant was employed in the warehouse of the respondent company. In late April 2008 he came to the warehouse and spoke to one of the warehouse staff (hereafter known as P) concerning the rosters. He was informed that the claimant had been harassing him (P) and calling him names when he was doing the respondent's faulty goods returns. P told him that the claimant had said that he was only doing the returns to get a raise and it was the best thing to "get into bed" with the witness and his girlfriend. He contacted the Operations Director who took the matter from there.

On cross-examination he stated that he was with the company ten years. The claimant commenced employment in 2006. He and the claimant did not get on and had a "personality clash" although the claimant had been a good worker and there had been no other specific complaints about him from other staff or customers. He explained that P, the claimant and one other had worked in the warehouse and had equal responsibilities.

A colleague of the claimant (known as P) gave evidence. He worked with the claimant and one other in the warehouse. He worked well in the company until the first witness had asked him to do the company's faulty goods returns. In March the claimant began making crude comments towards him saying he was only doing the returns to get into the respondent's good books, the comment concerning the respondent's first witness and his girlfriend and other comments. No one witnessed the comments and he asked the claimant to stop. He did not report it at the time but told the claimant that if he did not

stop he would “put him in a coffin”.

He reported it to the respondent’s first witness in April 2008 but said that he said he would leave as he found it unbearable. The respondent’s first witness reported it to the Operations Manager. The Operations Director came to the premises with a representative and took a statement from him.

On cross-examination he stated that he had commenced employment with the respondent in February 2008. Work was fine until the respondent’s first witness asked him to carry out the duty of doing the company’s faulty returns. The claimant took offence to him carrying out this duty. There was no C.C.T.V. coverage over the area where he did the company’s faulty returns. He never told the claimant to stop saying his remarks in front of other staff. He went directly to the respondent’s first witness about the claimant’s problems as some of the comments were directed at him.

The Operations Director gave evidence. He received a call from the respondent’s first witness from the premises in Drogheda and got a brief outline of what had occurred between P and the claimant. On April 30th he attended the premises with the respondent’s consultant who was a former Director of the company and the respondent’s representative at the EAT hearing. They met P offsite and took a statement. They described the company policy to P and stated how they would “go forward”. P informed them that the incidents only occurred when he and the claimant were alone.

They returned to the Drogheda premises and spoke to the claimant asking if he wanted a witness present. He nominated the third person who worked in the warehouse (hereafter known as S). They outlined the allegations against the claimant. He denied the allegations against him. The claimant did say various things happened but refused to entertain the idea of his alleged bullying towards P. A copy of the respondent’s bullying policy was offered to the claimant but he refused to accept it. It was a very lengthy meeting. The claimant was suspended with pay in order for the matter to be investigated further. It was agreed that they would meet again on May 7th at 12.00pm.

On May 2nd 2008 they gave the claimant a formal letter of the complaint against him. The witness and the respondent’s consultant meet again with P and informed him that the claimant denied the allegation of bullying and was asked if he wished to continue working with the claimant. He felt the bullying would continue. Other staff were also interviewed but no one had heard anything.

On May 7th 2008 he, the consultant, the claimant and his colleague S met. They again went through the serious allegations laid against the claimant who agreed that he might have called P a few names but that it did not constitute bullying. The meeting was adjourned, as they did not appear to be getting anywhere. The witness and the consultant left the room but returned some time later. They could get no further discussing the serious matter. It was a very difficult situation; the claimant was very unhelpful and would not even take a copy of the bullying policy. The witness said they had to protect the complainant’s health and safety. The witness said that as it was clearly gross misconduct it was decided to summarily dismiss the claimant. He explained that he had thought of transferring the claimant to another branch but the only vacancy was in the Blanchardstown premises some 33 miles distance and they did not want to move a potential problem to another site.

On cross-examination he stated that, at first, the claimant had denied the allegations against him but later admitted to calling P some names. There were no previous major problems with the claimant although he had previously been given warnings these had not been taken into account when deciding to dismiss the claimant. He said that he had been aware of friction between the claimant and P.

When asked by the Tribunal he stated there was no internal policy to appeal a decision to dismiss. He explained that he came to the decision to dismiss the claimant after the two meetings with the claimant, the meetings with other staff and the claimant’s lack of co-operation. P was the only staff member who had submitted a bullying complaint against the claimant.

Claimant’s Case:

He stated that he had never been given a written copy of the allegations laid against him. He was shown a copy of the bullying policy but refused to look at it, as he was so shocked at the allegations against him. He did not admit to bullying. He had got on with P but did not see eye to eye with the respondent’s first witness.

On cross-examination he stated he was shocked to have to attend the meeting of April 30th 2008 and denied the allegations laid before him. He did request a copy of the bullying policy after the meeting. He was shocked when he received and read the letter dated May 2nd 2008 setting out the allegations against him. He did not push this letter back at the Operations Director but had pushed away the bullying policy at the first meeting. He had not made the comment concerning the respondent’s first witness and his girlfriend. He had told P that he was being asked to do too much work and did say heshould “try not to let anyone make an eejit out of you”. People expected too much from P.

On re-direction he said that he had been told after the meeting of May 7th 2008 that P’s word was being taken over his.

When asked by the Tribunal how much notice he had been given before the meeting of April 30th 2008 he said that it was on the spot. He said that he had not been uncooperative but had been shocked at what he had been told. He gave evidence of loss.

Determination:

The Tribunal have considered the evidence of the dismissal in this matter and find that the dismissal was unfair. From the evidence it appeared that the employer held meetings with staff and failed to confront the claimant with the evidence arising from those meetings. In addition the employer failed to give the claimant a reasonable opportunity of answering the claims made by the complainant or take account of the claimant’s disposition at the meeting. The employer did not provide the claimant with a copy of a statement made by the complainant. The employer also failed to afford the claimant the right of proper representation at the meeting. The Tribunal also determines that the employer acted in a precipitant manner in accepting the uncorroborated statement of the complainant when it should have been possible for them, to establish with some further investigation or surveillance corroboration of the complaint without alerting the claimant. In the circumstances the Tribunal hold that the claimant was unfair dismissed.

The Tribunal awards the claimant award the sum of € 8,500 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)