

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

EMPLOYEE

- *Appellant*

CASE NO.

UD1308/2011
TE170/2011

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

EMPLOYER *Respondent*

under

TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

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

Members: Mr. R. Prole
 Ms. E. Brezina

heard this appeal at Naas on 2nd October 2012

Representation:

Appellant:
Respondent:

The determination of the Tribunal was as follows:-

This case came before the Employment Appeals Tribunal by way of an employee appealing the decision of the Rights Commissioner dated 9th June 2011 reference number r-102006-ud-10/JC.

At the outset of the hearing the parties explained that an incident involving the claimant had taken place and they wanted the Tribunal to decide if the incident amounted to gross misconduct, and therefore whether the dismissal was fair or unfair. It was agreed between the parties that, at the time of the incident, the claimant was on a final written warning.

Respondent's Case

On 19th November 2011 at 17:15, MC, the claimant's manager entered the spawning hall and witnessed the claimant removing strings from the compost machine. The compost machine is a large and powerful machine with discs that rotate at an extremely fast speed and is regarded as class A in the risk assessment. The compost machine has a number of safety features and safety mechanisms.

MC saw the claimant cut strings from the spinners/winch while the machine was still operating.

MC could not believe what he was witnessing. He approached the claimant and explained how dangerous and unacceptable his actions were. The claimant confirmed that he was aware of the emergency button on the machine but he was in a rush to get home. MC told the claimant that they would discuss the incident further the following Monday.

The following Monday the claimant met with MC to discuss the events of the previous Friday evening. The claimant was given the opportunity to have someone present on his behalf. He declined the offer of representation. The claimant was reminded that he was already in receipt of a final written warning in respect of not wearing a high visibility vest.

On 24th November 2011 a meeting took place between the claimant, MC and another member of senior management. During this meeting there was a recess to discuss the issues. MC and the member of senior management decided that what occurred on the evening of Friday 19th November 2011 amounted to gross misconduct. Based on this it was decided that the claimant should be dismissed.

Determination

Based on the respondent's uncontested evidence the Tribunal finds that the incident involving the claimant and the compost machine was a clear breach of the safety mechanisms and amounted to gross misconduct. Accordingly the dismissal of the claimant was fair and the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

The claim under the Terms of Employment (Information) Acts 1994 and 2001 was withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)