

### **Introduction and Overview**

The Complainant ( ) was employed as a food service (warehouse) technician for just short of 4 years. An event occurred between the Complainant and a manager on a particular day which led to a sharp interaction between the two. The Respondent contends that there was behavior by the Complainant against the manager, such as to constitute grounds for Summary Dismissal for Serious Misconduct. An initial investigation conducted by the inspectors of the Labour Relations Office led to a belief that there was merit to the complaint, but there was an inability to conciliate the parties and effect a settlement. The matter was therefore referred to the Employment and Labour Relations Tribunal.

### **Terms of Reference**

The Respondent served a notice of Summary Dismissal to the Complainant under terms of Section 25 of the Employment Act 2000 as operative prior to June 1, 2021 when various amendments were made to the named Act above. The Complainant countered with a claim of Unfair Dismissal as per section 28 of the same named Act above.

### **Evidence Submitted and Heard**

The Respondent submitted a section of video footage which was purported to show the critical portions of the interaction between the parties. Three witnesses also attended in-person to participate, whilst a further witness submitted only a signed witness statement. Various supplementary documentations were also supplied.

The Complainant submitted no evidence of his own to the Tribunal process but he instead relied on his ability to elicit any necessary support for his position by cross-examination of the witnesses and evidence of the Respondent.

### **Deliberations and Findings of the Tribunal**

The burden before the Tribunal is to determine if the Respondent acted in accordance with the provisions of the Respondent's policy and those of the Employment Act 2000 when terminating the employment relationship.

There was no dispute about the behavior of the Complainant that was seen on the video. The Complainant admitted to the exchange between he and his manager, albeit noting that the behavior was out of character for him and driven by a prior exchange between the two. There was no evidence of prior misconduct of any sort on the job or any similar or related issue between the interacting parties in the matter.

There was also no demonstration that the 'HR procedures' used in this case by the company was as comprehensively sensitive to a full examination of all facets of the behaviors and the events of concern as are offered by the Associate Handbook and also by the Safety and Health Staff Wellness Handbook. In particular, there appeared to be insufficient investigation prior to termination as would be expected as reasonable from the documents used by the Respondent HR unit.

The Tribunal panel does share its disappointment that the Respondent did not carry out the comprehensive investigation that would seem to be reasonable for a behavior which several persons judged to be 'out of character' for an Employee who had no other reported blemish on record. At least one witness for the Respondent position did suggest some discomfort with the style of the manager centrally involved in the matter. Relevant assertions about the manager's conduct that were made belatedly by the Complainant were untested because of his failure to provide advance evidence to the Tribunal process and could have proved a substantial counterweight in our assessment.

The Respondent's Associate Handbook clearly sets out in section VI. Code of Conduct the expectations of employees around discrimination, harassment and abuse. In addition, the Respondent's Safety & Health Staff Wellness Handbook, specifically the Workplace Violence Prevention section clearly sets out prohibited behavior including assault of any form and loud, disruptive or angry behavior or language that is clearly not part of the typical work environment. Evidence was presented that on March 2, 2017, the Complainant signed off acknowledging that he had read and understood the contents of this handbook.

There was reference in the evidence to the start of events as having taken place in the freezer area but there was no evidence submitted by either party to elucidate events in the freezer. This was seen as being a 'disturbing omission' to what was otherwise a wealth of evidence by the Respondent to support the necessity and appropriateness of 'Summary Dismissal'.

**Determination and Order of the Tribunal**

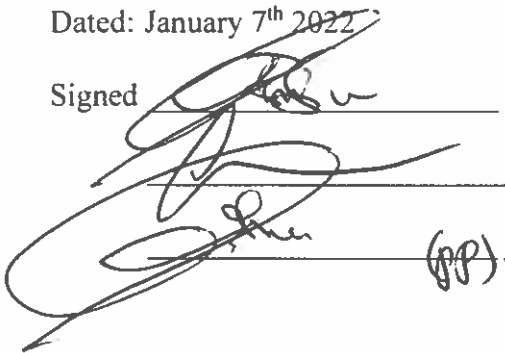
Based upon the written and oral submissions, the Tribunal panel has determined that:

- i) Although there were limitations on the evidence submitted by the Respondent, the Respondent's policies contained within their Associate Handbook and Safety & Health and Staff Wellness Handbook sufficiently set out what behavior would not be acceptable in the workplace. In addition, the Complainant acknowledged his behavior but did not present any evidence to support his claim of unfair dismissal.
  
- ii) The case of the Complainant for unfair dismissal is rejected.

It is the Order of this Tribunal that the Complainant is therefore not entitled to the remedy being sought.

Dated: January 7<sup>th</sup> 2022

Signed



Dr. Michael Bradshaw (Chair)

Ms. Cheri. Minors (Panelist)

Ms. Yolanda. Outerbridge (Panelist)

(pp)