

## **EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.  
MN842/2006  
UD1276/2006

against  
Employer

under

### **MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mrs M. Quinlan

Members: Mr. J. Goulding  
Mr. B. Byrne

heard this claim at Dublin on 3<sup>rd</sup> May 2007

Representation:

Claimant:

Mr. Saul Woolfson BL, instructed by Lewis E. Citron, of Lewis E. Citron & Company, 7 The Gables, Ballinteer Road, Dundrum, Dublin 16

Respondents:

XXXX

The determination of the Tribunal was as follows:-

The claimant had worked for the respondent company, a garage, as a car valet for more than three years. The respondent's business is divided into two departments sales and service. The claimant was employed in the service-department, he cleaned cars that had been serviced. The incident that resulted in his dismissal occurred on Fri 25<sup>th</sup> August 2006. It was usual for someone to drive to a local shop at lunchtime to buy lunch for the employees. On the day in question the claimant was omitted from the lunch run. He took a car from the forecourt and drove to the shop to buy his own lunch and returned to the garage. The car he took was a new sports car and unfortunately while he was away the customer came to collect it. The sales staff, not realising he had borrowed the car, thought that the car had been stolen. There was a moment of panic while staff searched for the car and considered contacting the Gardaí, until the General Sales Manager returned from lunch and said that he had seen the claimant driving the car in the vicinity of the local shop. The car was not stolen. The claimant came back and the

customer was given the car. No one spoke to the claimant about his actions.

The director in his evidence stated he was not at work that day. He was phoned at home and informed of the incident. He came to the garage on Saturday to find out what happened. Sales staff work on Saturday, but the service staff do not. The claimant did not have a contract of employment. Employees without full driving licences are not allowed to drive cars on the road. The cars used for the 'shop run' are serviced cars being tested by a mechanic or an apprentice under the supervision of a mechanic. The keys for service cars and sales cars are segregated strictly.

On the Monday when the claimant came to work, the director called him to the office and asked he if he had taken the car. The claimant admitted that he had taken the car. The director asked the claimant if he had permission to take the car. The claimant did not reply. The director then dismissed the claimant for gross misconduct.

The claimant was not suspended from work. He did not have a representative at the meeting and he did not receive formal notice of the meeting.

### **Determination**

From the evidence furnished by the respondent the Tribunal is satisfied that not even the most basic practices of good industrial relations were in existence in the Respondent Company. There was no contract of employment, no warnings were given nor was the claimant suspended from work. He did not receive any notice of the meeting nor was he given any opportunity to be represented at the meeting at which he was summarily dismissed.

The Tribunal is of the unanimous view that the claimant was unfairly dismissed. His claim under the Unfair Dismissals Acts 1977 to 2001 therefore succeeds and the Tribunal awards him the sum of € 4560.00. The claim under the terms of Minimum Notice and Terms of Employment Acts 1973 to 2001 also succeeds and the Tribunal awards the claimant €1584.00. The total award is €6144.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

