

## **EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

Employee

UD92/2006

MN49/2006

against

Employer

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. E. Murray

Members: Mr. G. Phelan  
Mr. T. Kennelly

heard these claims at Limerick on 7 March and 16 May 2007

#### **Representation:**

Claimant:  
Mr. Gary Keogh, Gary Keogh & Co Solicitors,  
57 O'Connell Street, Limerick

Respondent:  
XXXX

The determination of the Tribunal was as follows:

The respondent employed the claimant as a machine operator from October 2002. He had previously worked for an associated company doing the same type of work since 1998. The employment was uneventful until an incident on 6 December 2005 as a result of which he was issued with a written warning for leaving his foam extruder machine unattended.

At around 7-30am on 8 December 2005 an incident occurred whereby there was an explosion and subsequent fire in the vicinity of one of the two machines that the claimant was responsible for. The respondent's case was that after the fire was extinguished there was the equivalent of two hours production from the foam extrusion machine on the factory floor. The claimant should have stopped the machine before so much foam escaped on to the factory floor. The claimant's position was that the majority of the foam on the factory floor had been in bags left there from a previous incident involving other personnel and that the bags contributed to the state of affairs that pertained

after the fire.

The technical director (TD) of the respondent conducted an investigation into the incident of 8 December 2005. The claimant suffered some injuries as a result of the incident and was taken to hospital by the general manager (GM). TD did not ask the claimant what had happened. He blamed the claimant for the incident and in particular for permitting a build up of extruded material in the area around the machine. The claimant was suspended with pay as a result of the incident. On 3 January 2006 the claimant was dismissed in a conversation with GM who told the claimant that he was being dismissed for putting the company in danger. No evidence was adduced by the respondent in relation to the procedures used in arriving at, and carrying out, the decision to dismiss the claimant and no evidence was led from the persons most closely involved in the dismissal itself.

On the evidence adduced to the Tribunal the respondent has failed to establish that fair procedures were employed. On this basis it must follow that the dismissal was unfair.

The claimant having failed to show evidence of loss the Tribunal awards €1,840-00, being four weeks' pay, under the Unfair Dismissals Acts, 1977 to 2001. In addition the Tribunal awards €920-00, being two weeks' pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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