

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee  
MN1054/2005  
WT488/2005

UD1436/2005

against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal  
(Division of Tribunal)  
Chairman: Ms G. Small B.L.  
Members: Mr. J. Reid  
Ms. E. Brezina

heard this claim at Dublin on 30th June 2006  
and 28th November 2006  
and 29th November 2006

#### Representation:

Claimant: In person

Respondent: Mr. Alex White BL instructed by Ms Catherine O'Connor  
A & L Goodbody, Solicitors, IFSC, North Wall Quay, Dublin 1

The determination of the Tribunal was as follows:

#### **Respondent's case:**

The Tribunal heard evidence from Mr A. who has worked with the respondent for twelve years four of which have been in Ireland. He was store manager at Liffey Valley at the time of the claimant's employment but has since moved to the Naas store. In February 2005 there was an investigation in relation to an allegation that the claimant refused to serve a customer. This was, according to the witness, negligence on the part of the claimant and necessitated going to a disciplinary hearing. Witness had not been involved prior to the disciplinary hearing. Documentation was opened to the Tribunal, which he said was in accordance with the investigatory procedures of the respondent. The notes taken at the investigation stage were available to him. The claimant worked as checkout operator and the role profile for this post was shown to the Tribunal in addition to the training induction. The respondent's view is that no matter what position you hold in the company you are there to help the customer therefore if the customer asks for assistance you give it. Hardware and household items tend to be bulky and it is the general practice to help customers

with the goods to their car.

Going through the disciplinary process employees are told at the beginning of each meeting of their right to adjourn or have a witness present. Supporting documentation in relation to the disciplinary hearing with the claimant was opened to the Tribunal. The claimant insisted that it was not mandatory to lift goods to the customer's car. The claimant was issued with a written warning and it was felt that he let the customer and the respondent down badly. There could not be any doubt in the claimant's mind that it was his job to bring out the customer's goods. There was an appeal process and the claimant did lodge such appeal against the issue of the written warning however this witness had no further involvement, in that process.

In cross-examination the witness was asked where in the role profile did it say that the claimant had to carry out customer's goods and the response was that employees may be advised to do other tasks. The line manager is allowed to ask an employee to carry out a reasonable request.

The store manager Ms K. in her evidence told the Tribunal that she had responsibility for the showroom whereas the general manager was responsible for the whole store. She carried out an investigatory interview with the claimant on 13<sup>th</sup> February 2005. It was her decision that the matter should go to a disciplinary hearing, as she was not happy with the claimant's responses during the interview. She did not have direct contact with the claimant as he only worked at weekends and she worked only alternate weekends and she did not have any specific dealings with checkout operators. On 27<sup>th</sup> August 2005 she received a complaint in relation to the claimant's refusal to carry goods to a customer's car. When the claimant was told that the matter was being investigated he got quite angry. She advised him to compose himself and to return to his work at the checkout. The following day when the checkout supervisor asked the claimant to go for his break he refused and got very emotional. He was suspended on full pay in accordance with company procedures. However the claimant would not sign the paperwork in relation to the suspension. This witness was not aware of any complaint made against her by the claimant. He did not make any complaint directly to her and there was no mention of harassment. She had no further involvement in the case.

On the 2<sup>nd</sup> day of the hearing resuming the representative for the Respondent summarised:

The claimant worked in the respondent company in Liffey Valley shopping centre. The claimant was subject to a disciplinary action in February 2005 because of a complaint that he didn't help customers. The claimant did not deny that he refused to assist customers; his position was that he wasn't required to assist customers by bringing goods to their vehicles. The claimant received a written warning in March 2005.

Following incidents on 28<sup>th</sup> August 2005 the claimant was dismissed in October 2005. The claimant had refused to take a lunch break at the time he was requested to take the break and had used threatening and abusive language to his manager on 28<sup>th</sup> August 2005. There was a lengthy investigation of the incidents. During the investigation it transpired that they became aware that the claimant wished to appeal the warning that had been issued to him in March 2005. The claimant had refused to assist customers by bringing products to their vehicles in March 2005. The respondent interrupted and stopped the investigation of the incidents of 28<sup>th</sup> August to allow the appeal of the warning issued in March. The warning was upheld and they continued the investigation / disciplinary procedure of the August incident. On completion of the disciplinary hearing and as a result of the incidents on 27<sup>th</sup> 28<sup>th</sup> August 2005 the claimant was dismissed in October 2005.

The Tribunal heard evidence from the support store manager Mr. E. His title was a store manager but he was the support store manager to Ms K. He told the Tribunal that he had spoken to the claimant's supervisor on 28<sup>th</sup> August 2005. Following this he spoke to the claimant about taking his break. The claimant refused and became loud and aggressive. He brought the claimant to an office and the claimant became abusive. He told the claimant that if he continued his attitude he would have to be suspended. The claimant told him he would be happy to be suspended. He removed himself from the situation and another manageress Ms K stepped into the situation. The claimant returned to the checkout area and an hour later the manageress carried out the suspension. Whilst she was doing this she was with the Claimant and a colleague in an office. The witness called to the office and the Claimant shouted at him that he should not be present. He asked the Claimant to stop shouting and the Claimant told him that it was part of his culture. The Claimant was refusing to leave the store if he was being escorted. They agreed that he could leave unescorted.

The claimant was allowed to return to work on 17<sup>th</sup> or 19<sup>th</sup> September while the disciplinary process was in progress. The witness did not take part in the investigation / disciplinary process as it would not have been appropriate. Following incidents on 27<sup>th</sup> 28<sup>th</sup> August 2005 the claimant was dismissed in October 2005.

#### Cross-examination:

The Claimant asked the witness if he remembered that he told him he would suspend him if he did not go on lunch break. The witness replied "no, I said we may have to suspend you in the office and you said that you would be happy because you were suspended before, the situation became heated". When asked if he was part of the suspension meeting the witness replied, "no". He was asked why he entered the meeting and he explained, "because as far as I was aware the meeting was over and you were refusing to leave". The witness explained when asked that the Claimant was suspended because he was in a highly emotional state and that suspension "did not mean guilt".

The Tribunal heard evidence from the project manager of the stores countrywide. He had worked in the Liffey Valley store at one time. He did not know the Claimant before these matters arose. He was asked to be involved in the disciplinary part of the process as he was the next most senior manager and also because it had to be a different manager than the investigating manager.

The witness explained the process: there was an investigation first and after the investigation the matter was quashed or went to disciplinary process. He was not part of the investigation. His duty pertained to the disciplinary process. The investigation documents were sent to him. His task was to review the documents.

He had a meeting with the Claimant and a witness who took notes. The meeting lasted two hours. The Claimant was asked if he had anything to add and however he didn't. The Claimant wanted to discuss the allegations and he explained that they were not there to discuss the matter and that he was to make a decision. He also told the Claimant that he could appeal the decision as outlined in the company handbook.

The witness explained to the Tribunal that he adjourned the decision making so as to allow the Claimant to appeal a decision made by the company for an earlier incident in January.

At a later time the warning issued to the Claimant for the January incident was upheld. The witness reconvened his disciplinary process. He re-read all the documents and made a decision to dismiss

the Claimant. He dismissed the Claimant because in the company they had a team environment. It was his responsibility to protect the employees and to uphold how the customers view the store. He decided that the Claimant “broke all rules and could not be a team player and made a decision we depart company”. The witness was asked about the Claimant refusing to help customer. He explained, “the facts show he refused the customers request and this was upheld, it is part of his job role, part of the induction process, he admits he has done (this) customer role before”.

Regarding the break the witness explained that the Claimant refused to go on a break and his reason was that it was too close to lunchtime. He explained to the Claimant that if there was a collective grievance there was a process to resolve this. If the grievance was about an individual manager there were other grievance procedures. The Claimant had not availed of the procedures. The witness told the Tribunal that he was not aware that the Claimant had a grievance pertaining to breaks over a six-month period. The Claimant was dismissed by letter dated 07<sup>th</sup> November 2005. The Claimant did not appeal this dismissal.

#### Cross-examination:

In answer to questions from the Claimant the witness explained that he did not make the decision to dismiss on the previous appeal (regarding January incident), he made the decision on, “three incidents of 27<sup>th</sup> and 28<sup>th</sup>”.

The witness explained that there was a forum for staff to address problems and matters were placed on a bulletin board. He explained, “not once in the year that I was there was the front end breaks mentioned, never once was it brought up to me about breaks”.

#### **Claimant’s case:**

The Tribunal heard evidence from the Claimant. The Claimant referred to documents opened to the Tribunal regarding the meeting whereby he was suspended. The Claimant told the Tribunal that he was co-operative at the time and Ms K then told him that he was to be escorted off the premises. It was for the Respondent to justify why he was being escorted from the premises. At the time of his suspension his dispute regarding breaks was not addressed. The Claimant also opened other correspondence to the Tribunal. He contended that Mr. E was not told why he was refusing to leave the premises nor did he ask. Also Mr. E “barged into” the office. The security guards were not called. He and Mr. E had had a heated argument and “he was not the best person” to call.

The Claimant told the Tribunal that his alleged actions were not investigated properly. The Claimant opened a letter dated 28<sup>th</sup> September 2005 to the Tribunal. He made the point to the Tribunal that he was requesting clarification from the Respondent regarding accusations.

The Claimant opened a letter dated 15<sup>th</sup> September. He made the point that he requested to be informed in writing by the Respondent of the actions that they were taking and that he would not be attending a meeting as he was only verbally told of the meeting by management. Following this the Respondent wrongly asserted that he just did not turn up for the meeting. No questions were put to him and the matter adjourned and then moved to a disciplinary process. The Claimant explained that, “If it is an investigation then every party should be allowed”, “I have to face that physically”.

The Claimant also contends that he was never issued with a final written warning and that procedures were unfair.

He was initially suspended for his emotional state and he should have been allowed to make a

statement.

He took exception to the fact that staff members delivered a letter to his home address, as his address should be confidential.

The Claimant contends that regarding the Respondent's case that he did not carry out an instruction it was never explored as to whether it was a fair instruction merely the respondents case was he refused to carry it out.

Regarding the lunch breaks the Claimant contends that he was penalised because he reacted and the Respondent did not keep records of lunch breaks.

Regarding the loading of customer's vehicles he was never approached by customers, it was the line managers who approached him. Also the goods could be awkward and heavy.

**Determination:**

Having heard the copious evidence in this case the Tribunal are unanimous that the Claimant was not unfairly dismissed. Regarding the first incident the Tribunal consider that carrying goods to a customers car is within the ambit of the Claimant's employment and that the Claimant's conduct at that time constituted misconduct. Regarding the issue of lunch breaks there was some substance to the Claimant's complaint, however he failed to invoke grievance procedures or relevant "grass roots" procedures. The Respondent correctly halted the latter disciplinary process to allow for an appeal of the warning issued regarding the Claimant's objection to carrying goods for a customer. The Respondent did adhere to the principles of natural justice. The Tribunal find accordingly, that the Claimant was not unfairly dismissed. The claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

The claim under the Minimum Notice and Terms Of Employment Acts, 1973 to 2001, fails.

The claim under the Minimum Notice and Terms Of Employment Acts, 1973 to 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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