

## EMPLOYMENT APPEALS TRIBUNAL

**Claims of:**

Employee

**Case No.**

UD824/2006

MN541/2006

WT266/2006

**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: Mr. D. MacCarthy S.C.

Members: Mr. W. Power  
Mr. A. Butler

heard this claim at Wicklow on 23rd April 2007

**Representation:**

Claimant: Ms. Frances Meenan B.L. instructed by Ms. Sharon McKenna Murphy,  
McKenna Murphy, Solicitors, 9 Dublin Road, Bray, Co. Wicklow

Respondent: Mr. Paul Murray B.L. instructed by Mr. Stefan O'Connor, Cullen Tyrell &  
O'Beirne, 3 Prince Of Wales Street, Bray, Co. Wicklow

**The determination of the Tribunal was as follows:**

The fact of dismissal is in dispute in this case.

Claimant's Case:

Giving evidence the claimant told the Tribunal he was initially employed by the respondent as a general operative. The respondent is a family-run business and is involved in the building industry.

As the claimant progressed in the respondent's employment he was appointed to the role of Operations Manager. The claimant worked closely with the Managing Director (hereafter referred to as MD). They had a meeting at 8am each day to discuss work. The claimant also liaised with the Contracts Manager. The claimant had a good relationship with MD and considered him a friend until an incident on the 3 May 2006.

On the 3 May 2006 the claimant attended for the morning meeting with MD. A dispute arose between MD and the claimant regarding a personal matter. The claimant told MD he could not believe he was accusing him when he had been loyal to him. The claimant provided specific examples to the Tribunal of instances where he had been loyal to MD. MD was aggressive and the claimant was shocked. The claimant was very hurt as he was always loyal to MD. The claimant had a file in his hand and he slammed it on the desk and exited MD's office. The claimant felt betrayed. MD emerged from the office and came "storming" after the claimant. He ran up the corridor to where the claimant was and said to the claimant "Don't get aggressive with me." MD was frantic, annoyed and in a rage. The claimant felt that MD wanted to put an injustice onto the claimant that had been done to him.

The dispute escalated to a physical altercation between MD and the claimant. MD ran at the claimant and hit him with his chest. The claimant threw MD against the filing cabinets. MD moved towards the claimant again "like a man possessed". The two of them grappled and MD fell to the ground, banging his head. The claimant restrained MD on the ground and asked him to calm down. The claimant told MD he was leaving the premises. The claimant left but when he was outside MD emerged from the office calling the claimant's name. The claimant turned around and MD punched him with a closed fist in the face. The altercation lasted fifteen minutes approximately.

The claimant telephoned the Contracts Manager who told him to take a week off work until everything calmed down. The claimant received his P-45 nine days later on the 12 May 2006. The claimant has not spoken to MD since the 3 May 2006.

The claimant gave evidence of loss to the Tribunal.

During cross-examination the claimant denied that he had reached across the desk and hit MD on the head. The claimant did not have any cuts or lacerations after the incident with MD. MD had hit the claimant chest-to-chest and on the left side of his face.

The claimant recalled telephoning the Contracts Manager a second time and meeting with him on the evening of the 3 May 2006. He did not recall telling the Contracts Manager that he had beaten MD. The Contracts Manager told him that the matter would be "sorted". The claimant denied that he had said he would not return to work without an apology.

#### Respondent's Case:

Giving evidence the Contracts Manager (hereafter referred to as CM) told the Tribunal that he started work on the morning of the 3 May 2006 at 8.10am approximately. He received a telephone call from the claimant who told him that he had beaten MD. CM told the claimant that he would speak to him at a later time. He did not tell the claimant to take a week off work. The claimant telephoned CM a second time that day and asked CM to meet him. When they met the claimant told CM what had happened and CM listened. CM did not ask the claimant who had thrown the first punch. At this stage CM had seen MD and he knew the claimant would not be returning to work. The claimant told CM that he had lost his temper. CM believed the claimant had asked to meet him in order to have CM reconcile things between the claimant and MD. CM did not even attempt to reconcile them, as he knew it was pointless. CM told the claimant he would talk to MD but CM knew this was pointless. CM felt that neither he nor fellow employees would be able to

work with the claimant again.

During cross-examination CM stated he had not taken any notes of the telephone calls or of his meeting with the claimant. CM did not take statements from either party in relation to the incident. He did not try to resolve things, as he knew it was pointless. CM stated he would not work with the claimant again.

Giving evidence Ms. G told the Tribunal that she is the wife of MD and a co-director of the company. Ms. G saw her husband a short time after the altercation with the claimant. Her husband had blood on his face and he was “a complete mess”.

During cross-examination Ms. G stated she is the secretary for the company and she interviews employees. She did not talk to the claimant about what had happened on the 3 May 2006 because he had beaten her husband. Ms. G did not attempt to contact the claimant after the incident.

Giving evidence Mr. D told the Tribunal he was the first person to arrive at the premises after the incident on the 3 May 2006. He arrived approximately ten minutes after the incident. Mr. D saw MD who had a swollen eye; was very distressed and bleeding.

During cross-examination Mr. D stated that he had worked with the claimant and found him to be even-tempered.

Giving evidence MD told the Tribunal that until the 3 May 2006 he and the claimant had confided in one another and had a very good relationship. The claimant was a good employee.

On the 3 May 2006 MD asked the claimant a question relating to a personal matter of MD's. The claimant reached across and hit MD across the desk. MD managed to get out of his chair and push the claimant out to the hallway. The claimant rammed MD's head against the doorframe and caused injury to MD. MD did not push against the claimant's chest nor did he follow him out to the yard. MD told the Tribunal his eye was injured and his sixth rib was broken. The claimant did not contact MD again. MD did not dismiss him; the claimant dismissed himself. The claimant could not continue to work there after what he had done. MD attended two doctors and an optician in relation to his injuries and he also had a number of scans and x-rays.

During cross-examination MD stated what happened on the 3 May 2006 was totally out of character for the claimant. MD denied being aggressive on the 3 May 2006. MD denied he had pushed up against the claimant or that they had grappled. He denied that the claimant had thrown him against a cabinet.

MD stated it was possible he had spoken to CM on the 3 May 2006 after the incident. MD had no further contact with the claimant after the incident on the 3 May 2006.

### **Determination:**

The employer struck the first blow. The employee defended himself but he overreacted in that he used excessive force in doing so. Having regard to all the circumstances of the case the Tribunal finds that the claimant was unfairly dismissed and awards him compensation of €16,000 under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal is satisfied that the claimant's employment ended without notice and he is therefore

entitled to four weeks' gross pay in the amount of €3,588.00 (being the equivalent of four weeks' gross pay) under the Minimum Notice & Terms of Employment Acts, 1973 to 2001.

The claim under the Organisation of Working Time Act 1997 was withdrawn during the hearing.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

