

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
Employee

CASE NO.  
UD270/2006  
MN152/2006  
WT85/2006

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. J. Sheedy

Members: Mr. J. Hennessy  
Ms. H. Kelleher

heard this claim at Waterford on 27th April 2007

Representation:

Claimant(s) : Mr. Patrick Moran, Moran Solicitors, 2 Westland Square, Dublin 2

Respondent(s) : Mr. Gary O'Mahony, I.B.E.C., Confederation House,  
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

#### **Respondent's Case:**

The accountant for the respondent company gave evidence. He told the Tribunal that the claimant was paid while on suspension and had received his full holiday entitlements. Under cross-examination, the witness said that the claimant would have signed a summary at the front of the contract of employment. Copies of the terms and conditions of employment were displayed in the employees' locker room.

The general manager of the plant gave evidence. He was involved in the investigation into the claimant's behaviour. He interviewed all of the witnesses present on the day. The main allegation was that the claimant had struck another employee in the workplace on the production line. As per the disciplinary procedure, the claimant was suspended on full pay pending investigation. The manager held a meeting with the claimant where the allegations were put to him. He asked the claimant for his side of the story. The claimant told him that there was verbal banter between himself and a colleague. When the colleague struck the claimant in the back, the claimant retaliated by striking his colleague on the face. The claimant chose not to bring a witness to the meeting and

declined to provide a witness to the incident. He did, however, bring a person as an interpreter as his English was poor. The manager interviewed the other colleague involved and after a period of suspension, came to the conclusion that he had no choice but to summarily dismiss the claimant. The matter was too serious to overlook.

By way of background to the situation, the manager told the Tribunal that there had been an incident in the plant in the recent past, where a serious stabbing occurred. Matters of such serious behaviour could not be tolerated. He told the claimant that he was dismissed on the 6<sup>th</sup> September 2005. He did not formally inform the claimant in writing as he felt that verbal notice was sufficient at the time. The claimant did not claim self-defence when interviewed. The other colleague was also dismissed. This was the first incident in which the claimant had been involved. The manager would not tolerate this behaviour on the factory floor as there were various knives and other implements in the vicinity that could be used during an altercation of this type. When the claimant said he would seek advice regarding his dismissal, the manager informed him that it was his entitlement to do so. He did not appeal the decision to dismiss.

Under cross-examination, the manager told the Tribunal that the grievance procedure was displayed in a laminated case in the employees' locker room. They were originally displayed in English only and at a later stage, were translated into Ukrainian. He interviewed the two people involved in the incident along with the production supervisor. No other witnesses came forward. The claimant had told him that he had been defending himself from his colleague.

The production supervisor gave evidence. On the day of the incident, he noticed a commotion and when he went over, the two individuals were "holding on tightly to each other". They had been fighting but the supervisor had not seen who started it. The claimant had a good level of English. He attended the disciplinary meeting with the manager and the claimant on the 29<sup>th</sup> August 2005. The claimant gave his side of the story. He was remorseful that it had occurred.

Under cross-examination, he said that the claimant had been a good worker and had not been involved in any incidents previously. As part of the investigation, he had asked a number of individuals if they had seen the incident and they all denied any knowledge of how it started. The supervisor was unaware of any injury the claimant had.

### **Claimant's Case:**

The claimant gave evidence. He worked for four years at the respondent's plant. He outlined problems he had noticed at the plant regarding discrimination and he had notified management of problems regarding heavy lifting on previous occasions. His work permit had been renewed every year with no problem. He had attended an induction course when he started. His terms and conditions of employment had been outlined at this course and a translator had attended to translate all documents. He had complained about heavy lifting to the health and safety manager on a number of occasions. On the date of the incident, he had quarrelled with his colleague in the canteen while on a break. The quarrel had continued to the factory floor. He was carrying trays and when he passed his colleague's table, he was punched in the back. He put the tray down and turned to face him. The colleague had left his workstation and approached him with a clenched fist. The claimant pushed him away and his colleague punched him in the face breaking the skin on his lip. The claimant pushed him in the chest but did not hit him in the face. When the supervisor arrived, the claimant was holding his colleague by the shoulders. They were both told to attend the office. The claimant gave his side of the story over a forty minute interview and said that he was trying to defend himself. At the final meeting, he was not told of an appeal procedure but had told the

manager that he was going to seek his own advice.

Under cross-examination, the claimant told the Tribunal that he was larger than his colleague. He refused to sign the statement at the end of the meeting because it said that he had struck his colleague in the face. He did not know that he could submit his own statement. He had not been told to bring a witness to the meeting.

A factory worker gave evidence through a translator. He had been close to the incident on the day in question. He heard an altercation and saw the claimant being punched in the back. The claimant tried to defend himself while his colleague was “throwing punches”. Nobody had asked him to give evidence during the investigation. Under cross-examination, he confirmed that he no longer worked at the respondent company. He had been dismissed for falling asleep on duty. He denied he was giving evidence for revenge purposes.

**Determination:**

The Tribunal determines that the respondent company acted within the procedures as set down in the grievance and disciplinary procedure and are satisfied that the claimant was aware of these procedures. The claimant was involved in an altercation on the factory floor where dangerous implements were available at hand. The claimant and his colleague had a dispute which lead to a physical altercation and both were summarily dismissed for gross misconduct. The Tribunal are satisfied that the respondent company acted appropriately considering the gravity of the situation and therefore determines that the claim made under the Unfair Dismissals Acts, 1977 to 2001, fails.

As the claimant was summarily dismissed for gross misconduct, the claim made under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, fails.

The claim made under the Organisation of Working Time Act, 1997, was withdrawn at the outset.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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