

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

Employee

MN455/2006  
UD687/2006

against

2 Employers

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: Mr. D. Mac Carthy S C

Members: Mr W. Power  
Mr. P. Woods

heard this claim at Naas on 10th May 2007

Representation:  
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Claimant :

Ms Michelle Carey B.L., instructed by Mr Marcin Szulc, Maguire McClafferty,  
Solicitors, 8 Ontario Terrace, Portobello Bridge, Dublin 6

Respondent :

Director

The determination of the Tribunal was as follows:-

**Claimant's case:**

The claimant is a Polish national and he gave his evidence through his interpreter  
Mr Marcin Szulc

On 6<sup>th</sup> March 2006 the claimant was called into the office by Mr S the charge-hand. When he got to the office Mr B the foreman was there and told him he was being given a written warning. Mr S interpreted the conversation for the claimant. When he asked the reason for the warning he was told

it was for aggression and the claimant refused to sign as he did not feel guilty. During the conversation he was repeatedly asked to sign the warning and told that if he did not he would lose his job. Mr B made a telephone call and used a name which made the claimant assume it was to director that he called. When the claimant asked what was meant by aggression he was told when one gets physical and grabs a person by the clothes. He also asked to whom the aggression was directed towards, and he was told that it was another employee who had made a written complaint against him. The claimant was asked to have this written complaint shown to him but this was refused.

The claimant then asked for a day off, paid or unpaid. He was then asked why he needed the day off and he said he wanted to consult with his lawyer and his union SIPTU. He did not know how Irish law worked. Despite his request he was not given the day off. Mr B said he could not consult the Trade Union as the company did not deal with the union. Mr B then spoke on the telephone again and the claimant assumed he was speaking with the director. Mr S told the claimant to sign the warning - otherwise the director would most certainly fire him. No understanding was reached as to the day off or the signing of the document. If he had felt guilty he would have signed the warning. He then understood Mr B to say his job was "finished". The claimant asked could he be given the warning and make additions to it and the words translated for him were "no write no job".

The claimant felt he was fired by his not signing the written warning. He was told that if he did not sign he was fired. It was difficult to say who had the power to fire him but he felt that Mr B and the director had this power. There was a previous foreman and the boss said of him that whatever he the foreman said he'd sign up to it.

After the claimant was told he was fired he went to the canteen and put a note at the end of the warning letter to say that he refused to sign it and his signature was witnessed by Mr S. He knew he had lost his job but he was hoping the union would help him get his job back. The meeting lasted half an hour. As he was leaving Mr B told him he would not find a job in his local town and he would make sure of that. A short distance from the company he passed the director. The claimant went home, thought things through, and then returned to ask for the reason in writing as to why he was fired. The director told him that he did not have to give in writing the reasons for his dismissal.

In cross-examination he said that as he did not understand the charges and Mr S translated the written warning for him. He felt that the warning should have been written in English and Polish. Mr S was hard of hearing and during the conversation he asked him to repeat to the respondent but he could not be 100% positive that he translated correctly but most likely he did. He said he was not jealous of a colleague being promoted and there was a problem which started prior to that.

The claimant was advised by SIPTU to ask for his job back and that if this did not happen he would take the respondent to Court.

In answer to questions from Tribunal members the claimant said that he did not have a contract of employment and there were no disciplinary procedures.

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

The director in his evidence told the Tribunal that on the day in question the claimant was brought in for the purpose of giving him a written warning. He had to attend a meeting in Dublin and in hindsight he should have stayed back. On route to Dublin Mr B rang him to say the claimant was refusing to sign the warning. He said that was not a problem and advised him to mark on the warning letter that the claimant refused to sign. Mr B told him the claimant was being extremely aggressive in the office and used words to the effect that it seemed the claimant was "losing it". He advised him to tell the claimant to leave the workshop and that he was returning to the office. He returned his car and headed back. The conversation could not have lasted half an hour. He met the claimant about 600 yards from the premises. He expected that when the claimant saw him that he would have returned to him.

He called the claimant and Mr S to the office. An apology would have sorted things out. The claimant was aggressive and he was not having that, so he sacked him on the spot. Mr B did not have the authority to dismiss. The claimant came back later that evening asking for his job back and threatened that if he did not get his job back that he would take the respondent to court. He replied by saying to go ahead and take him to court.

In cross-examination witness said that when he called the claimant and Mr S to the meeting the claimant said he did not believe that Mr S was translating properly. That was when the aggression started.

In answer to questions from Tribunal members he said the first he heard of the claimant looking for a day off was at the hearing of this case. There are twelve employees in the company.

Neither Mr S or Mr B were present at the hearing. Mr S still works for the respondent but Mr B no longer does.

**Determination:**

There was a complete absence of procedures in this case. The claimant was dismissed for his refusal to sign the written warning and for his alleged aggression. While on one view he might be said to have been dismissed by the foreman, he was later that day dismissed by the director. The Tribunal make an award of €8,000 under the Unfair Dismissals Acts 1977 to 2001 "as is just and equitable having regard to all the circumstances" in this case. An award of €516.45 is being made under the Minimum Notice and Terms of Employment Acts 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

