

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO.  
UD883/2006  
MN584/2006  
WT/291/2006

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 L. Ó Catháin  
Members: Mr D. Hegarty  
Mr. J. McDonnell

heard this claim at Cork on 12th June 2007

#### Representation:

Claimant: Noel Murphy, Independent Workers Union, 55 North Main Street, Cork

Respondent: Peter McInnes of Mason Hayes & Curran, Solicitors, South Bank House,  
Barrow Street, Dublin 4.

The determination of the Tribunal was as follows:

The claim under the Organisation of Working Time Act, 1997 was withdrawn.

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

The security director for Europe, Middle East and Africa for the respondent company gave evidence. He was asked by the HR manager in Cork to investigate an anonymous email that had been sent to all employees on the site. The email was critical of the respondent's performance management policy. The claimant was identified to him as a likely sender of the email. The witness considered the content of the email to be defamatory to the respondent. He considered that sending the email was a breach of the policies of the respondent. The email was sent from a yahoo email address using a computer with public access at CIT.

A leaflet with the same message as the email was distributed at a company social event held in a pub.

The witness came to the Cork site, to interview the claimant as part of the investigation. The claimant only admitted receiving the email and the leaflet. He refused to answer questions concerning the email. The claimant was agitated during the meeting. The claimant admitted sending the email when presented with evidence, including draft emails found on his computer. The investigation continued. A spreadsheet containing the email addresses of the respondent's employees in Cork was found on the claimant's computer. This was unusual and concerning as it identified the number and location of the employees.

A disciplinary meeting was convened on 27<sup>th</sup> March 2006. The role of the witness at the meeting was to present the evidence he had gathered. The witness stated that the claimant was dismissed for completely inappropriate use of company email, and not for trade union activity.

All employees have access to the respondent's grievance procedure, and employee assistance program and an ethics hotline.

The HR manager gave evidence that the claimant was identified as the likely source of the email and the leaflet because there was a letter on file from a union concerning pay increases that said the claimant was a union member.

The engineering resource manager gave evidence. The claimant worked in his area for approximately 5 years. He chaired the meeting on 27<sup>th</sup> March 2007. He was the decision maker. The HR section supplied him with an information pack. The claimant was informed of his right to have someone with him at the meeting. He came alone. The security director presented his evidence and the claimant was allowed to reply. The claimant was unhappy with the performance management policy, the policy was not controversial within the company. This policy was understood by the employees. It allowed people to be rewarded according to their contribution, and 10% of employees did not receive a pay rise each year.

Following the meeting the engineering resource manager took time to reflect, read over his notes and make his decision. No one instructed him to dismiss the claimant. He was influenced in making his decision by the 4 policy breaches, and the breach in trust. Trade union activity was not an issue.

The director of engineering, who chaired the first appeal meeting, gave evidence. At the meeting the claimant was given the opportunity to present new information but he did not do so. After the meeting he took time to consider the issue and concluded that the decision to dismiss was correct. He did not receive instructions on what to decide. Also he does not have a problem with trade unions. His decision was upheld by a second appeal.

### **Claimant's Case**

The claimant started working for the respondent as a software developer in 1992. Initially he was based in Dublin, in 1999 he moved to Cork. A problem arose for him when he did not get a pay rise for 5 years. He moved for a time from software development to software configuration. The move did not work out for him. He was unhappy with the respondent's performance management policy. He wanted his colleagues to join him in taking action against it. He spoke to his manager about the issue but was told it was company policy.

When he saw the poster for the social event, he thought it would be a good occasion to hand out leaflets. He contacted his union with suggestions. The leaflet was distributed on 27<sup>th</sup> January 06. The next day he took the content of the leaflet and started sending it to colleagues as an email and he also asked them if they agreed with the policy.

The claimant agreed that he did not bring his concern about the performance management policy to the employee assistance program, or to the grievance procedure or to the 'Ask Adrian' forum. He did not feel that doing so would achieve anything. He used the 'open door' policy to talk to his manager but nothing came of this intervention. He felt that his use of the email system was legitimate. He sent the email anonymously because he felt that otherwise there would be consequences, being open would be like painting a bull's eye on himself. He only received one response to his email. He felt that his actions were justified in the circumstances.

Since his dismissal, the claimant had found work as a software developer.

A former colleague of the claimant gave evidence. The email system was not secure; in his view allowing access to all the email addresses was injudicious. Even so he thought the email sent by the claimant was audacious. In the respondent's employment joining a union was seen as regressive. It was his opinion that sending the email did not breach company policy.

**Determination:**

The Tribunal having considered all the evidence put before it, find that the respondent overreacted to the gravity of the claimant's actions. The gravity of the misconduct did not justify instant dismissal. The Tribunal also find that the claimant contributed substantially to his dismissal. The Tribunal make an award of €5,323 under the Minimum Notice and Terms of Employment Acts, 1973 to 2001. An award of €677 is made under the Unfair Dismissals Acts. The total award is €6,000.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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