

**EMPLOYMENT APPEALS TRIBUNAL**

CASE NO.

Employee

UD1341/2006

against

MN888/2006

Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. M. Murphy  
Mr. F. Barry

heard these claims at Dublin on 21 May and 6 September 2007

**Representation:**

Appellants:

Ms. Nóra Morris, James A. Connolly & Co, Solicitors,  
13 St. Andrew Street, Dublin 2

Respondent:

Mr. Conor Kearney B.L. instructed by Donal Taafe & Co, Solicitors,  
Malthouse Square, Smithfield Village, Dublin 7

The determination of the Tribunal was as follows:

The respondent, a digital advertising company, employed the respondent in January 2005 as a sponsorship sales executive otherwise known as an account manager. The employment was uneventful until the claimant received a verbal warning from the Managing Director (MD) on 5 September 2005 in relation to failing to give advance notice of absence from work and for coming to work late. The absence in question related to the birth of the claimant's child and the claimant's position was that the respondent accepted that this part of the verbal warning was erroneous. MD denied this. There was no formal time recording system for employees and the respondent relied on the sporadic observations of the Operations Manager/Financial Controller (OM) to keep a check on time keeping. OM worked part-time on Mondays, Wednesdays and Thursdays until June 2006. The claimant's position is that often, when he was accused of being late, he would have been in the office and left to go on business calls before OM arrived.

MD sent an e-mail to the claimant on 22 February 2006 titled "ALWAYS Running Late". The claimant replied to MD on 23 February 2006 and in it he addressed the matter of his starting time with regard to the fact that, from 1 April 2006, for three days a week, Monday to Wednesday, he was to be taking his son to a child minder on his way to work and would be unable to attend work before 10-00am on those days. On 28 June 2006 the claimant signed a new contract as Business Development Manager. The

claimant received a pay rise but the respondent disputed that this position was a promotion. The claimant was required to be office based on Mondays and Fridays only, with a 10-00am start on Mondays. OM returned to working on a full-time basis from June 2006 and her estimate was that the claimant was late arriving at the office about seventy percent of the time.

The claimant was invited to attend a golfing event at Naas golf club on Monday 4 September 2006. He was initially invited to attend around Easter time and the invitation was confirmed in July 2006. The claimant's position is that he told MD of this event and received MD's approval to attend. MD left the office shortly after 10-00am that morning and the claimant saw MD leave the car park as he arrived. The claimant, who was dressed in his golfing clothes, arrived in the office at around 10-20am and left for the golf some time after noon. After the claimant arrived at Naas golf club he received a telephone call from MD who was angry that the claimant was playing golf. After the completion of the golf the claimant returned to the office at around 7-15pm where he met MD. The claimant's position is that MD immediately told him that he was fired over a trust issue. MD believed that the claimant was negotiating a return to a previous employer. After an argument with MD he gave over his mobile phone, laptop computer and diary to MD. The respondent's position is that the claimant was dismissed for breaches of policy in regard to the claiming of expenses in that the claimant submitted incorrect bills to substantiate his expense claims and for poor timekeeping. MD sent e-mail to OM at 3-33pm on 4 September 2006 titled "Verbal warning". This began "Adrian" and was on the subject of timekeeping and lateness. At 7-41pm on 4 September 2006 MD sent e-mail to the claimant entitled "2<sup>nd</sup> Official Verbal Warning", this e-mail was on the subject of false expense claims. At 1-07pm on 5 September 2006 an e-mail entitled "Final Written Warning" was sent to the claimant and referred to the expense claims and the claimant's punctuality. The claimant's dismissal was confirmed in a letter dated 6 September 2006.

**Determination:**

It is common case that the dismissal was effected in the meeting between MD and the claimant at around 7-15pm on Monday 4 September 2006. Until that meeting, whilst the claimant may have been aware of MD's unhappiness at his attending Naas golf club following a telephone call received just after his arrival at the golf club, the only formal warning the claimant had received was the verbal warning of 5 September 2005. Whilst there may have been more discussion and correspondence about the matter of the claimant's punctuality the Tribunal is satisfied that the warnings dated 4 and 5 September 2006 and the dismissal letter dated 6 September 2006 all came after the dismissal had been effected. The Tribunal notes that neither of the contracts of employment which the claimant received during his employment contained any mention of either disciplinary or grievance procedures. In these circumstances that Tribunal finds that the claimant was dismissed without any, or fair, procedures. It must follow that the dismissal was unfair. Accordingly the Tribunal awards €10,000-00 under the Unfair Dismissals Acts, 1977 to 2001. The Tribunal further awards €1,000-00, being one week's pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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