

## EMPLOYMENT APPEALS TRIBUNAL

Claim Of:  
Employee

Case No.  
UD827/2006

against  
Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S. C.

Members: Mr. J. Browne  
Mr. P. Trehy

heard this claim at Wexford on 29th August 2007

#### **Representation:**

Claimant: In person

Respondent: Mr. Martin Fitzgerald B.L. instructed by Mr. Liam Riordain,  
Arthur O'Hagan, Solicitors, Charlemont Exchange,  
Charlemont Street, Dublin 2

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

The Tribunal heard dismissal was in dispute between the parties.

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

The claimant commenced employment with the respondent in April 2001. On the 26 June 2006 the claimant arrived late for work as he had overslept. Before leaving his house, he telephoned Director J and told him he would be late. The claimant was fifty minutes late for work that day. When he arrived the first person he met was Director J who told him that Director G was upset. The claimant replied "f\*\*k him" and made his way to the company vehicles waiting at the side of the road. When he met Director G there, he was told he would have to work until 7.30pm to get the job finished. The claimant replied that he could not work past 4.30pm. The claimant felt that being fifty minutes late did not justify having to work an extra three and a half hours. Director G told the claimant that if he did not like it he could go home. The claimant went home, as it was his understanding that Director G meant that he was to "go home now." The claimant believed he was being sent home for the day.

On Tuesday, 27 June 2006 the claimant arrived into the office at 7.28am. The claimant asked to speak with all three directors of the company. Director G asked the claimant what did he want and

told him that he “was finished anyway”. Only two of the directors were available to meet with the claimant. The claimant met with Director G and Director J in the office. Director G asked the claimant who did he think he was, coming and going when he wanted. The claimant acknowledged that he had been late for work the previous day. He recounted the interaction of the previous day with Director G. The claimant stated at the meeting that he had not walked out the previous day, he had been sent home. Director G stated that the claimant was twisting things and that the claimant turned on his heels and went home when he heard he would have to work until 7pm. Director G told the claimant at this meeting that he had walked out, gone home and that the claimant was finished. Director J did not say anything during the course of the meeting. The matter became heated between the claimant and Director G before the claimant left the premises on the 27 June 2006.

The claimant established his loss.

During cross-examination it was put to the claimant that on the morning of the 26 June 2006 he had already told Director J that if Director G said anything to him, he was going home. The claimant denied this.

It was put to the claimant that he left his job on the 26 June 2006. The claimant replied that he had no intentions to leave his job for a day, as he would have lost out on pay. It was put to the claimant that if he had offered to work until 4.30pm, Director G would have accepted this, as he needed the claimant for work that day. The claimant replied that he had told Director G he could only work until 4.30pm that day.

Answering questions from the Tribunal the claimant stated that due to domestic arrangements he could only work until 4.30pm on certain days, including Mondays. The directors were aware of this.

### **Respondent’s Case:**

Giving evidence Director G stated that on the 26 June 2006 he was under pressure to complete a contract within a specific period of time. The claimant should have arrived for work at 7.30am. The claimant telephoned Director J at 8.05am to say he would be in shortly. The claimant arrived to work at 8.40am. Director G told him that he was one hour and ten minutes late and that they might have to work until 7pm. The claimant replied that it would not be 7pm when he finished. Director G was aware of the claimant’s domestic arrangements. The claimant told Director G if this was not satisfactory to him he was going home. The claimant walked off the job.

At the meeting on the 27 June 2006 the claimant indicated that he had been told to go home the previous day. Director G told the claimant to tell the truth about the matter. He did mention something about the claimant having a hangover and he did mention that the claimant was twisting things. The claimant shouted and the matter became heated.

The three directors make the decision together in relation to the dismissal of an employee. Although conversations took place between the directors about the claimant going home, a decision in relation to the claimant was not made before the 27 June 2006. It was Director G’s understanding that the claimant had left his job as he walked away on both the 26 and 27 June 2006.

Answering questions from the Tribunal, Director G stated the company does not have a written

grievance procedure. Director G did not consider the 26 June 2006 a cooling-off period as the claimant did not apologise on the 27 June 2006.

Giving evidence Director J confirmed he received a telephone call from the claimant on the morning of the 26 June 2006. The claimant arrived for work at approximately 8.30am. Director J told him that Director G was unhappy. The claimant replied that if Director G said anything to him, he was going home.

At the meeting on the 27 June 2006 the claimant told Director J that he had been sent home the previous day. Director J replied that this was not what he had heard. In the claimant's presence Director J said to Director G, "this man says you told him to go home." Director G stated that the claimant was twisting things and he recounted what had happened the previous day. The claimant said, " So you're telling me to go."

Director J confirmed the three directors make the decision to dismiss an employee together. During a conversation Director G said to him, "we can't put up with a man walking away from the job like that." Director J agreed.

During cross-examination Director J confirmed that the company does not have a disciplinary procedure.

Answering questions from the Tribunal, Director J confirmed that Director G telephoned him about the claimant on the night of the 26 June 2006.

**Determination:**

Having carefully considered the evidence put forward by both parties, the Tribunal finds that the claimant was dismissed. Although there was a conflict of evidence in this issue we accept the claimant's version as the more probable, especially having regard to the evidence of Director J. As the respondent did not show any substantial grounds to justify the dismissal (having denied there was a dismissal at all) the dismissal is deemed to be unfair under Section 6.

However, the Tribunal also finds that the claimant contributed by fifty per cent to the dismissal. Taking this contribution into account, the Tribunal awards the claimant €2,500.00 compensation.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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