

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM(S) OF:**

Employee

**CASE NO.**

MN140/2007

UD218/2007

against

Employer

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: Ms. M. Levey BL

Members: Ms A. Gaule  
Mr. S. O'Donnell

heard this claim at Dublin on 11th July 2007

**Representation:**

Claimant(s) : Mr. Conor Keogh BL instructed by:  
Doyle Hanlon, Solicitors, 6 Richmond Road, Drumcondra, Dublin 3

Respondent(s) : Mr. Michael Gillen, IBEC, Confederation House, 84/86 Lower Baggot Street,  
Dublin 2

The determination of the Tribunal was as follows:-

**Claimant's Case:**

The claimant gave evidence. He stated that he had commenced employment in November 1999 with the respondent as a driver. He explained that he had problems with his supervisor (known as KT).

The first problem occurred on July 24<sup>th</sup> 2006. The claimant's partner was experiencing a difficult pregnancy and had to be taken to the hospital. He rang into the office around 6.30a.m. to get cover for his shift as he was not attending work. He spoke to KT but KT hung up the telephone. He called again and, again, KT hung up the telephone. The claimant told the Tribunal that he had to report KT to HR. He also told the Tribunal that he had had previous problems with KT and had reported them to HR but had received no feedback.

On August 9<sup>th</sup> 2006 a second incident occurred. The claimant was in the yard with two colleagues when KT came towards them. KT looked at the claimant and asked him, while swearing, what he was looking at. The claimant said that he felt intimidated but had not provoked the outburst. When asked, he said that he had not been called to any investigation about the matter.

On October 9<sup>th</sup> 2006, the claimant was in the respondent's canteen and had been left to sit in there for his entire eight-hour shift. He said that he felt it was a punishment as KT controlled the rosters. KT entered the room to get to the control room, he swore at the claimant asking why the claimant did not go and run up to the Operations Manager (known as LT). The claimant said that he felt KT had only said this as he, the claimant, had complained about himbefore.

The claimant told the Tribunal that he had never been called to any investigatory meetings about his complaints of KT. The claimant gave evidence of loss.

On cross-examination the claimant told the Tribunal that he did not think KT hung up the telephone on July 24<sup>th</sup> 2006 to make a call to secure a replacement driver. When asked, the claimant said that he had previous knowledge of KT from when KT worked for another security firm. When he told his shop steward (known as RQ) and LT, both suggested he put his complaints in writing. He explained to the Tribunal that he wanted someone to speak to KT about his behaviour towards him.

When put to him he agreed that bad language was used in the workplace but not in an abusive manner. He told the Tribunal that there were only certain staff members left to sit in the canteen for their shift. When put to him, he said that he had discussed redundancy with LT and was told that she would look into it. He also asked LT if he could be moved to another location but was told no.

When asked by the Tribunal, he said that it was normal practice for members to bring their complaints to their union shop steward. When asked what he wanted the respondent to do about his situation, he said that he wanted them to put procedures in place because he was being bullied.

A crew leader and claimant's union shop steward gave evidence on behalf on the claimant. He told the Tribunal that KT was a "rough and ready" character and always said what he thought. There had been a few instances of bullying between KT and other staff in the past.

He told the Tribunal that he had received the claimant's written complaints but when asked for a follow up by the claimant, the witness had nothing to tell him. The witness explained that, at the time of this hearing, he was absent on sick leave from the respondent company and all his notes were in his locker. When asked, he said that he had not received a copy of the written warning, dated October 20<sup>th</sup> 2006 sent to KT by LT.

On cross-examination the witness explained that there were two branches of the union within the respondent company. The witness was not KT's shop steward. When asked by the Tribunal, the witness explained that if there were a problem with two opposing union members, discussions would take place between the relevant shop stewards.

Another crew leader gave evidence on behalf of the claimant. He explained that he had been present at the incident of August 9<sup>th</sup> 2006. He re-iterated what the claimant had said in sworn evidence in relation to the incident. The witness told the Tribunal that he had not been asked to attend any investigatory meeting. KT was not an approachable person, would abuse people on the telephone and hang up on them. He had had run-ins with KT in the past and had reported him in April 2006. A couple of meetings were held with LT and he received a letter of apology from her on behalf of KT.

Another fellow driver and former colleague of the claimant gave evidence. He also re-iterated what the claimant had said in sworn evidence in relation to the incident of August 9<sup>th</sup> 2006. He had been present at the time of the incident. He had not been called to any investigatory meeting relating to the incident.

On cross-examination the witness said that the claimant had asked him to write a statement relating to the incident.

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

The Operations Manager (known as LT) gave evidence. The respondent had employed her for over seven years, two of these as the Operations Manager.

She explained to the Tribunal that it was not unusual for bad language to be used by staff in the respondent's working environment, even the claimant used it.

When asked, the witness explained that because of security reasons and tradition, rosters were only issued to staff 24 hours ahead of schedule. Monday, Wednesday and Friday were the respondents' busiest days; there would be no staff on stand-by. If the respondent were short staffed, runs would have to be cancelled and the extra work would be distributed amongst the rest of the staff.

One day during July 2006, the claimant approached the witness in the coin bay and informed her of his problem with KT. He was advised to put his complaint in writing and duly submitted it a few days later. The witness met with the claimant a few days later to discuss the matter. The witness told the Tribunal that she was aware of differences between the claimant and KT.

When the witness received a second complaint and two statements, she told the claimant that she would investigate the matter. She did not discuss the matter with the authors of the two statements. The witness told the Tribunal that she spoke to KT about the matter and issued a verbal warning. KT did not appeal the warning. When the claimant lodged a third complaint, the witness did not get to investigate the matter as he had left the respondent's employment. The payroll department informed her that the claimant had resigned.

On cross-examination the witness said that the claimant had not been victimised. He had applied to work a nine-hour day, five days a week. She explained that some runs took longer than nine hours and if this was the case, the claimant was not able to work on those runs and would remain in the canteen for the duration of his shift.

When asked by the Tribunal, she said that after the first incident she interviewed KT and two other supervisors that had worked in the control room that day.

**Determination:**

Having considered all the evidence submitted by both sides, the Tribunal finds that the respondent did not carry out an acceptable investigation of the claimant's complaints regarding the attitude of the supervisor KT and having regard to all the circumstances determines that it was not unreasonable of the claimant to terminate his employment and that the dismissal was unfair.

Taking into account the evidence of the employment position of the claimant since then, the Tribunal awards the claimant the sum of € 8,000 as being fair and reasonable in the circumstances.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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