

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD1152/2006

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B.L.

Members: Mr. J. Redmond
Ms. H. Henry

heard this claim at Galway on 28 November 2007

Representation:

Claimant:

In Person

Respondent:

Former Managing Director of the respondent

The determination of the Tribunal was as follows:

The claimant was employed as a depot supervisor from 11 July 2005. It is the respondent's position that on 12 December 2005 the claimant received a warning in relation to absenteeism. The employment was then uneventful until Sunday 17 September 2006 when the claimant's eight year-old son was injured at home and was taken by ambulance to hospital in Galway. The claimant accompanied his son to hospital and stayed with him in hospital until he was discharged at 6-00pm on Tuesday 19 September 2006. The claimant's wife (CW) was housebound at this time and unable to go to hospital with her son. CW telephoned the managing director (MD) of the respondent and informed him of the situation and told him that the claimant would not be at work on Monday 18 September 2006.

On Monday 18 September 2006 MD telephoned the claimant at around 10-00am to enquire as to his son's health, there was no problem with the claimant being off work. The claimant's son was awaiting scans of his injuries. The claimant's position is that MD telephoned him again at around 4-30pm on Monday 18 September 2006 and wanted to know if the claimant would be in work on

the next day. MD told the claimant to sort out his priorities and to decide which was the more important, his job or being at hospital with his son. The claimant replied that his family came first in this situation. The phone then went dead and the claimant never heard from MD after this, despite his having tried on three or four occasions to telephone MD and the respondent's office. The respondent's position is that MD telephoned the claimant some time on the morning of Tuesday 19 September 2006 to enquire when the claimant would be returning to work and the claimant was not sure. MD had sympathised with the claimant but pointed out that it was difficult to run the business not knowing when the claimant would return. The phone had then gone dead.

The respondent's position is that a final warning was sent to the claimant on Tuesday 19 September 2006 in regard to absenteeism. This letter referred to a phone call the previous day. The claimant's position is that he received no such letter. On 22 September 2006 the respondent received a form from Social Welfare that MD returned to the claimant unable to answer the question as to why the claimant's employment had ended. MD also enclosed a note to point out that the claimant had not handed in his notice and his employment had not been officially terminated.

Determination:

The Tribunal, having carefully considered all the evidence in this case, prefers the evidence of the claimant and find that the claimant was dismissed and that the dismissal was unfair. The Tribunal find that the most appropriate remedy is compensation and awards €12,250-00 under the Unfair Dismissals Acts, 1977 to 2001

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)