

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
Employee

CASE NO.  
UD88/2007

against

Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. Hayes BL

Members: Mr. D. Winston  
Mr. O. Nulty

heard this claim in Navan on 17 December 2007

Representation:

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Claimant(s) :

Mr. Michael Finnegan, Steen O'Reilly, Solicitors,  
31/34 Trimgate Street, Navan, Co. Meath

Respondent(s) :

Mr. Seamus Clarke BL instructed by BCM Hanby Wallace, Solicitors,  
88 Harcourt Street, Dublin 2

The determination of the Tribunal was as follows:-

The Claimant was employed by the Respondent in November 2004. Following a disciplinary investigation and hearing in August 2005 he was summarily dismissed for gross misconduct on the 22<sup>nd</sup> August 2005. He was informed of his right of appeal, which he exercised. There then followed correspondence from a solicitor on his behalf, who was not subsequently informed of the date of the appeal hearing. The initial hearing date was then rescheduled for the 7<sup>th</sup> October 2005. The Claimant's solicitor was not to be allowed represent him at the hearing and the Company was informed, certainly verbally although there was a dispute as to whether this had been done in writing, that the Claimant would not therefore attend the hearing.

The Claimant had been previously informed that the appeal hearing would proceed in his absence if he did not attend.

The Company's procedure provided that if an employee was dismissed he could be reinstated on appeal. It was not the case that a dismissal was suspended pending an appeal.

The Claimant was paid by the Respondent until the 31<sup>st</sup> July 2006 when a payroll audit revealed this. The Company has since sought the return of the overpayment without any apparent response from the Claimant. We accept that this overpayment was due to an oversight on the respondent's behalf. It is also of note that the Claimant commenced seeking employment in late 2005.

The question of whether it was reasonable not to allow the Claimant to have legal representation at the appeal hearing is a matter that goes to the fairness or otherwise of the dismissal. It does not affect the date of dismissal.

The Tribunal is satisfied that the Claimant was dismissed on the 22<sup>nd</sup> August 2005. A successful appeal would have caused him to be reinstated. An unsuccessful appeal would merely have confirmed that he had been dismissed on the 22<sup>nd</sup> August. As he failed to prosecute his appeal, it was unsuccessful.

On this basis the Claimant neither had the requisite service to bring a claim under the Acts nor was his claim brought within time.

On these bases, this claim under the Unfair Dismissals Acts, 1977 to 2001, is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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