

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
Employee

CASE NO.  
UD366/2007  
MN249/2007

against  
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: Mr. L. Ó Catháin  
Members: Mr. M. Forde  
Mr. J. McDonnell

heard this claim at Cork on 28th November 2007

#### **Representation:**

Claimant(s) : Mr. Ken O'Sullivan B.L. instructed by Mr Daithí O'Donnabhain, Solicitor,  
Sean Murphy & Co., Solicitors, 1 South Bank, Crosses Green, Cork  
Respondent(s) : Mr, Jim Reaney, IBEC, Knockrea House, Douglas, Co. Cork

The determination of the Tribunal was as follows:-

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

A director (D) of the respondent company gave evidence. He told the Tribunal that he had attended the factory on Saturday 3<sup>rd</sup> February 2007 at 10.30am as he happened to be in the area. The claimant was there cutting glass and there was a stranger beside him. D checked with the lady in the office and there was a corresponding docket for this work. D noticed that the shape of the glass was different to that stated on the docket. Machines were turned on that should not have been. He decided to speak to the claimant on Monday about it. The claimant did not attend work on the Monday. D spoke to the other director of the company and when the claimant attended work on the Wednesday, they invited him to the office. When D asked for an explanation of how the docket for the work differed from that of the work done, the claimant did not see that anything was wrong. He was arrogant towards D and the meeting ended quickly. D told the claimant that he was suspended and the claimant would have an opportunity to present his case at a later stage.

Under cross-examination, D said that the claimant was not due to attend work on that Saturday but did work on Saturdays occasionally. He was dressed inappropriately and had no safety attire. D had not specifically said that employees were not allowed to complete work for their friends but it was not unusual for employees to complete work and hand in a corresponding docket, once it had been approved by one of the directors. D pointed out to the claimant that he should not be there, and with a stranger, for health and safety reasons. D felt there was a break in trust between the claimant and the company. Two other members of staff were present on that Saturday for maintenance of the machinery.

The lady that worked in the office gave evidence. She held an administrative role in the shop that

was attached to the factory. On the 3<sup>rd</sup> February, the claimant told her that he needed a piece of glass. He came back at a later stage with the measurements and type of glass and asked her to make a docket. D checked with her at a later stage and she confirmed to him that she had a docket for the glass.

A second director (SD) gave evidence. He received a phone call from D on the Saturday and was informed about the claimant's behaviour. He met with D on the Monday morning and discussed the matter. The claimant did not attend work on the Monday or the Tuesday. On the Wednesday, SD and D invited the claimant to a meeting. The claimant declined to bring anyone with him. He was asked why he was in the factory on the Saturday. SD told him that it was wrong, fraudulent and out of order. SD said that the claimant was cocky and defiant the whole way through the meeting. SD told him to return to work while the matter was investigated further. SD spoke to another member of staff that was in attendance on the Saturday and he confirmed that he specifically turned on one of the machines for the claimant. This machine was due to be cleaned.

The claimant was suspended on Friday 9<sup>th</sup> February 2007. SD considered the matter over the weekend and discussed the matter with D on the Monday. He telephoned the claimant and asked him to attend for a meeting on the Tuesday. He also asked the claimant if there were any mitigating circumstances that could contribute to his case. SD asked the claimant to attend for a meeting on Wednesday 14<sup>th</sup> February 2007. The claimant brought a representative to the meeting. SD presented the claimant with a letter and told him that he was being dismissed. The claimant said "grand job" and left the meeting.

Under cross-examination, SD said that the claimant had come into the factory unrostered on the day in question, had ordered one product and made another. He had no permission to do so. It was not normal procedure for employees to do work for outside interests. The other two employees were there to do maintenance on the machines and the machines were not supposed to be turned on during this process. SD put the allegations to the claimant at the meeting on the 14<sup>th</sup> February. He had issued the claimant with warnings previously regarding the wearing of safety gear. SD did not have an issue with the claimant cutting glass for a previous director of the company. The claimant's actions were fraudulent and dishonest. SD said that he had no other option but to dismiss the claimant for gross misconduct. SD had not experienced any employee cutting glass for their own use previously.

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

The claimant gave evidence. He told the Tribunal that he had commenced employment with the respondent in August 2000. He had been a supervisor for four and a half years. On the morning of the 3<sup>rd</sup> February 2007, he attended work with a friend. His friend's window had been broken on the previous evening and the claimant was the only one able to fix it. The claimant attended in his regular clothing as he was not rostered to work. He had done this on a number of occasions. He had never seen anyone disciplined for attending on Saturday. The claimant outlined the specifications of the piece of glass to the Tribunal. He put these on to a docket and submitted it to the lady in the office. Subsequently, he accepted that the docket was incorrect. A different size, type and specification of glass was needed for the job. D did not mention the issue to him on the Saturday. He attended hospital with his daughter on the Monday and Tuesday and attended for work on the Wednesday.

The claimant was told on the Wednesday that there might be trouble over his conduct on the previous Saturday. D invited him for a meeting in the office with himself and SD. The claimant was asked to explain his actions in attending work on the Saturday. He did so but admitted that his answers may have been a "bit saucy". He did not believe it was an act of fraud and

admitted that he had made a mistake with the docket. The machines were already turned on when he went to use them. They needed to be switched on for maintenance. He worked thirty-five to forty Saturdays per annum on a roster and did not understand why this one was so important. Other staff members would often attend work and cut glass for their own purposes when they were not rostered. He would not have requested that his colleague turn on the machines had they not already been on. The claimant attended a further meeting on the 8<sup>th</sup> February. He brought a colleague with him. SD was there alone and told the claimant that there was nothing more to say. SD said that his action was classed as fraud and asked the claimant if he had anything to say. The claimant knew his job was on the line and felt that SD had his mind made up before the meeting. The claimant did not feel that the response of the respondent was proportionate to his actions.

Under cross-examination, the claimant said that he had received warnings about his behaviour in the past but these were not regarding significant events. He was a supervisor and would have made other employees aware of the regulations under health and safety. When he attended work on that Saturday, he filled out the docket before he realised what type of glass was needed. He denied it was an act of theft or dishonesty. He had often seen customers come into the workshop and walk around uninhibited. The claimant established loss for the Tribunal.

A colleague of the claimant's gave evidence. He was present in the workshop on Saturday 3<sup>rd</sup> February. He was in attendance to carry out maintenance on the machinery. His job is to seal units of glass together by machine before they leave the workshop. He had witnessed other employees attend work in the past and carry out work for their own purposes. This also happened when they were not rostered to attend work. On that Saturday, the machine was turned on and was ready for maintenance. Under cross-examination, the witness told the Tribunal that it was common practice for the directors to give permission to an employee to attend work and carry out their own work on a Saturday. There was always a requirement to complete a docket for this work. The witness was in the office when the claimant handed in the docket for his work on that Saturday.

**Determination:**

Having carefully considered the evidence in this case, the Tribunal determines that the claimant did commit an offence on the premises of the respondent on the 3<sup>rd</sup> February 2007. However the practice of attending the premises for work outside rostered hours was common. The claimant handed in a docket that was incorrect and admitted the offence when queried. In the Tribunal's view, the claimant did commit an act of misconduct but this act was not of sufficient severity to amount to gross misconduct. Accordingly, the Tribunal determines that the claimant was unfairly dismissed and awards him the amount of €1,865.76 under the Unfair Dismissals Acts, 1977 to 2001. The Tribunal awards the claimant the amount of €466.44 (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)