

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

UD574/2006

Against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr J. Goulding  
Mr. P. Woods

heard this claim at Dublin on 1st March 2007  
and 2nd March 2007  
and 18th May 2007  
and 16 July 2007  
and 12 November 2007  
and 14 February 2008

#### **Representation:**

Claimant(s): Mr. Michael Corcoran, 3 Kilmore Close, Artane, Dublin 5  
Mr John Dowling, Management Consultant And Facilitator, 8 The Close,  
Mount Merrion, Co. Dublin

Respondent(s): Mr. Tom Mallon BL instructed by Mr. David Farrell, IR/HR Executive,  
IBEC Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

## **Background**

Counsel for the respondent outlined to the Tribunal that an incident occurred on 17 December 2005 at a Christmas party between the claimant who was a senior manager and another employee, KS who was a more junior member of staff. It was not absolutely clear how this incident occurred. KS an employee spilt drink on the claimant as he was returning from the bar. The claimant pursued KS and engaged in an altercation and assaulted him. The matter was investigated by the respondent and resulted in a conflict of evidence. The respondent took the view that the claimant was wrong and the appropriate sanction in all the circumstances was one of dismissal. There was a need for trust and confidence in the work that was undertaken in the docks. The claimant destroyed that by assaulting an employee. KS the other employee was subject to a lesser disciplinary sanction than the claimant.

The union representative for the claimant stated that an incident occurred at the Christmas party on 17 December 2005 at the Grand Hotel, Malahide. The party commenced with a mulled wine reception and bottles of wine were given out at the meal. After that there was a free round of drinks and a free bar remained open until 2a.m. The claimant was employed in the docks area for thirty-four years. He outlined the following pillars as to why the claimant was not dealt with properly.

- (1) Both GK (HR manager) and OM (a manager) were self confessed witnesses to the alleged incident. GK carried out an investigation, which was supposed to be impartial. He believed that these two witnesses should be disqualified from being impartial.
- (2) The union was refused access to question witnesses.
- (3) The respondent undermined the claimant's choice of representative
- (4) During interviews KS and the union representatives O McD and MC asked could the incident be forgotten about with a handshake and this was refused on dubious grounds.
- 4(a) Both OM and GK took ownership of the complaint and there was no formal complaint for the union to work on.
- (5) KS was the only other employee affected
- (6) The claimant was not treated fairly and in the same manner as another manager (who was involved in an incident on 12 May 2003). The claimant was not given a fair crack of the whip and was treated in an entirely different fashion than the other manager.

## **Respondent's Case**

The first witness on behalf of the respondent KS told the Tribunal that he was employed with the respondent for approximately twenty-five years. Prior to the incident on 17 December 2005 he did not encounter any difficulties with the claimant. KS was employed as a crane operator. On the night of the Christmas party on 16 December/morning of 17 December a number of subsidiary companies were present at the function. By 2am. he was merry, he was on his way back from the bar to the end of the room and he was carrying drinks. He was pushed in the shoulder by the claimant who told him that he had spilt drink on his jacket. KS received a head butt on the nose and he went to see where the drink was spilled. He received a bang in the nose from the claimant; his nose was cut and was very sore for some days after. There was blood on the outside of his nose and there was a cut on the surface of his nose. The next morning the blood was congealed and he did not receive medical attention for it. The room where the party was held was a large room and the respondent had seven to eight tables booked. Approximately ten people sat at the table and it was potluck where employees were seated. He did not observe where the claimant sat. The

employees that he sat with at the meal moved to another table. He brought two pints of Guinness to a table and the claimant told him that there was drink spilt on his jacket. The jacket was on the back of the chair where the claimant sat. The incident lasted seconds. After the head butt he fell in the corner and colleagues who attended the function held the claimant back. KS could not identify these people. The claimant was interviewed by GK and OM. KS was suspended and the respondent took a serious view of this matter. KS was subjected to a hearing, he was represented by his trade union representative O McD and he received a final written warning.

In cross-examination asked if he had any problem with the claimant during the course of his work he responded that there were none that he was aware of. He started drinking at 8p.m. on the night of the party and he drank seven or eight drinks. When asked if he spilt drink on the claimant's shirt he responded that it was the claimant's coat that the claimant pointed to. He asked the claimant where he spilt the drink and he did not say this in an aggressive manner to the claimant. He did not seek medical help on the night that the incident occurred and he remained in the hotel a half hour after the incident. He may have spoken to GK and OM but he could not recall saying to them that he wanted to call the gardai. The next night he received a call from OM to inform him that he was suspended and he could not recall the time of the call. He attended a meeting the next day. As far as he could recollect OM told him that he was suspended from work over an incident that occurred. Asked did he make a complaint he responded, "who could he complain to". He did not make a complaint to OM on Monday morning. He was asked for an account of what happened and the matter was investigated. Asked did he ever make a complaint against the claimant he responded, "No, I don't think so". He was never asked to make a complaint. Questioned that he did not want to get the claimant into trouble he responded that he thought he was told the matter was still under investigation. He was suspended for six weeks and interviewed on a number of occasions.

In answer to questions from the Tribunal he stated that he received a call at approximately 9.30a.m. on Monday morning. Asked how much drink he had taken at the party he stated that he did not drink the wine at the table. The bar cleared at 1a.m.

The second witness on behalf of the respondent FD told the Tribunal he knew the claimant. FD was employed with the respondent for the past seven years to drive machinery and fork lifts. He did not encounter any problems with the claimant. He was present at the Christmas party in Malahide on 17 December 2005. He drank approximately nine pints. He observed an argument between the claimant and KS, they had words with each other and their voices were raised a little. The music was playing and he just heard voices. There was a bit of an argument and the claimant leaned back and hit KS in the nose with his head. KS fell against the wall and FD was involved in breaking up the argument and colleagues separated the claimant and KS. The claimant was held down by a couple of other managers and the situation was diffused.

In cross-examination FD stated that he heard raised voices and the incident was over in seconds. The claimant and KS were face to face and it appeared like loud talk and neither the claimant nor KS were aggressive. No one brought the argument to his attention

The third witness on behalf of the respondent GK told the Tribunal that he was an Industrial Relations consultant and was appointed as HR consultant for the respondent. He attended the function on 16 December 2005. A number of tables were taken by the respondent staff. All staff were invited and not all attended. He observed very little of the incident, which occurred, as the table he was seated at was located three to four tables away from where the incident between the claimant and KS occurred. When he arrived at the scene of the incident KS was against the wall. The claimant appeared to be jumping up to see what happened with KS and GK did not observe the

incident. He tried to get involved and an employee N L made sure that no one could get in. He stood around the other side. He spoke to both the claimant and KS. He ordered a taxi at 2a.m. He received a call from the taxi driver that he would be at the hotel in fifteen minutes. He asked the claimant to step outside, which he did, he told the claimant that he would get him home and that he would talk to him on Monday. While he was looking after the claimant OM looked after KS. He asked KS how he was and he told him that he would talk to him on Monday morning and he was quite sure that the taxi then arrived. The claimant was asked to come in on Monday. A meeting took place on 19 December 2005 and he went through the salient points. A number of people were interviewed in relation to the matter, GQ, DG, and FD.

Based on evidence produced and the fact that he saw blood on KS's nose, which was the result of a very high impact blow he was satisfied that the person who did it was the claimant. The claimant was a manager and it was appropriate to take disciplinary action against him. It was a violent verbal altercation. He was prepared to listen to factors regarding the incident. No one mentioned GE K who was at the party but he did not see anything. Two and a half weeks later GE K changed his story and informed him that he had visited the claimant the previous evening at his house. He was concerned about GE K's late arrival on the scene. He had to make a decision and there was a difference in the evidence obtained from G EK than was obtained from everyone else. GE K statement was verbatim as per the claimant. The outcome of the investigation was that KS was issued with a final written warning. The basis for this was that GK was satisfied that the altercation had taken place. The claimant felt aggrieved that drink was spilt on his shirt/jacket. Under the circumstances he was satisfied that a serious verbal altercation took place between the claimant and KS. If people could hear raised voices that was a serious matter. What the claimant did was inexcusable. The claimant's union representative made representations on the claimant's behalf. There was no evidence to support allegations that three incidents had occurred. After this a further line of enquiry was to follow and following on from that a disciplinary meeting was convened.

A meeting was convened with KS on 26 January 2006. The meeting concluded that the claimant had head butted KS. KS provoked the claimant and the claimant's reaction was incorrect, it was verbal and very physical. It was not an accident and it was a deliberate act on the part of the claimant. The claimant was a senior manager and had attended courses in supervisory management and disciplinary matters. The claimant took the matter into his own hands, he was a manager and managers were expected to behave and had to be trusted. What the claimant did was a breach of trust. It was an examination of the circumstances, the respondent had a duty of care to the health and safety of its employees and there was no other axe to grind. He stated that a manager walks away from those situations. GK took into consideration the drink that was supplied by the respondent. KS may have provoked the claimant at the last point and the claimant made the decision to do what he did and the ultimate sanction was dismissal.

In cross-examination GK stated that he was a consultant and in September 2005 he commenced employment with the respondent for two to two and a half days a week. Asked if he obtained responsibility to dismiss respondent employees he replied that he had not looked for it. He investigated the matter and he stated that the Chief Executive told him to do whatever he had to do. GK made the decision to undertake the investigation; he did not feel the need to obtain permission from anyone in the respondent company. He had undertaken other investigations prior to that. KS told him that the claimant had head butted him. There was never any formal written complaint by KS. KS was shocked and he was not sure if he had his facts together. KS made a statement after the claimant had head butted him. He stated that the claimant supplied him with his shirt, which was covered in beer stains. The shirt was presented to him thirty six to forty eight hours after the event. Asked why only three people were questioned he responded that everyone attending the

party had at least something to drink. He outlined the reasons for dismissal on 29 December.

KS told him that he was head butted by the claimant. The claimant said that KS's struck him first and he pushed the claimant back over a table. KS considered this to be an allegation of assault. He made the decision to dismiss the claimant.

A fourth witness on behalf of the respondent, the Chief Executive of the group told the Tribunal that he interviewed FD and the claimant. The claimant was a senior manager and he was supposed to act in a certain manner and not get involved in arguments. It was the view of the Chief Executive that the incident that occurred was a concern for the respondent and all employees attended the function as well as several other companies. Approximately ninety employees were present. He interviewed a few people and he was of the opinion that the claimant had head butted KS. The claimant was a senior manager and he should lead by example to other employees. The Chief Executive had been verbally abused at the Christmas party and was always verbally abused at Christmas parties, but he walked away from the abuse. Assault was the key issue and it was a very serious offence.

In cross-examination asked when he first heard of the incident he responded that he heard about it the day after it occurred which was Saturday. On the following Monday GK told him that a serious incident had occurred at the Christmas party. GK was undertaking a full investigation. Asked if he gave GK the power to dismiss employees he responded absolutely. GK dealt with HR/IR matters and he had full authorisation to do so. The Chief Executive told GK to deal with the matter, as he perceived it and GK was given implicit authorisation. GK told him that the incident might warrant dismissal. Asked if he believed in fair procedures he responded that he did. The claimant appealed his dismissal to him and it was never a question for him to step aside. He treated the case on its merits. Asked who else could the claimant appeal to he responded the shareholders. The Chief Executive answered to the board. Asked if the members on the board were shareholders he responded that there were two shareholders and one of the shareholders was chairman of the Board. Asked in relation to another event in 2003 he responded that it was dealt with locally and the union was involved.

On the third day of the hearing the Tribunal considered the admissibility of evidence concerning a previous incident involving another superintendent of the same rank as the claimant. Counsel for the respondent had objected to a booklet, which was called "the red book". The Tribunal ruled that "the red book" be admitted in evidence. On perusal of "the red book" it became clear that there were two versions of the facts of the previous incident, and a third position in between those two. The Tribunal made it clear that it would not address the rights and wrongs of the previous incident and admitted "the red book" on that basis.

On the 4th day of the hearing GQ told the Tribunal that he made a complaint against his superintendent in May 2006. GK requested it in writing and he did so. The process took some time GK told GQ that was the end of it and he told GK that he would get something in writing. He did not and he did not apologise. LB gave him an envelope, which he opened and he threw it in the bin.

In cross-examination when asked if he was in a union he responded that he was. He was not aware that it was processed through the bullying and harassment procedure and the union did not tell him.

LB told the Tribunal that he gave a written apology to GQ and it was his idea. He was out of order and unprofessional. He was not sure if he told the people involved. He made a statement

regarding his involvement for GC and he was made aware of the seriousness. He was not sure if the investigator knew. He apologised after the investigation.

In cross-examination he stated that he did not tell them before the meeting.

**Claimant's case:**

The first witness for the claimant his brother PG told the Tribunal that on the night of 17 December he sat opposite his brother at a table. KS walked around and other people were around. The claimant stood opposite him and noticed a stain on his back. PG looked around and he observed KS being aggressive. KS moved his head into the claimant's face and the claimant fell into a corner. He helped the claimant to his feet and then FD came over. PG went to see if the claimant was alright. GC then came over and they both went outside. He did not see the claimant head butt KS.

In cross-examination asked what kind of table he sat at he replied it was rectangular and about seven employees were at a table. Six or seven chairs were at each side and it was a wide table. He faced his brother at the table and he was three or four feet away. Nearest the wall there was a table, which was not being used. KS had come around the side and he carried drink. He was not paying that much attention to KS. He went around the back and he saw KS going around. KS just passed by and he glanced at him. KS walked behind the claimant. He could not hear if words were exchanged as the band was playing. The claimant wore a white/cream shirt and it had a dark stain. His brother had his back to the table. He reiterated that he did not hear or see anything. There was no chair between them. He observed a lot of shouting and cursing and KS was cursing. The claimant walked backwards and he did not curse. KS was very aggressive. Both the claimant and KS were standing very close and he thought that they fell, as they could not go any place else. Both KS and the claimant ended up on the floor and KS was nearest the wall. He did not see blood on KS but he heard that KS had a scratch on his nose. Mr. D was in the other corner and he lifted the claimant up and KS was still being aggressive. KS was half up and half down and the claimant had gone back to his seat.

The second witness for the claimant GEK known as GE told the Tribunal that he was the assistant to the fitters in the garage and he was employed for four years as a casual worker. He just thought that KS and the claimant would receive a warning. He witnessed what happened and it was a failing on his part that he did not speak up. He did not know what to do and he obtained advice. He contacted the claimant and he made a statement. He was seated at an end table and he observed KS walk towards the table, which was full of glasses. KS went to head butt the claimant and he lunged forward against the wall.

Asked what he had seen and whom he sought advice from he responded he sought advice from an employee in the office and colleagues in the garage and they all told him to tell the truth. He did not know who the shop steward was and he did not want to have anything to do with it. He did not want to get involved and he spoke to the claimant probably twice on the telephone. He visited the claimant and this was the first occasion that he was in the claimant's house. He told the claimant what he had observed. He spoke to the claimant at least twice and they had each other's telephone numbers. He saw KS laugh and smirk and he did not say anything. He tipped the drink and it could have been out of a joke. Asked what did KS do then he responded that he took his jacket, boxed the claimant and he had drink in his hand. He was seated at a table behind the claimant and he could observe that the claimant was saying something. He could hear KS shouting.

The claimant told the Tribunal that he was a superintendent/manager with the respondent. Prior to that he was employed by Poolbeg Stevedores and this subsequently was taken over by the Doyle group. He commenced working in the docks when he was twelve years old. He returned in 1974 and was employed as a checker and he was there for thirty-seven years as a general manager. According to GK there was no personal file on the claimant and he had an exemplary record. On 25 November 2005 he e-mailed GK and requested that his personal file be made available to him. He was informed that there was no file on him. The claimant had never been disciplined prior to 17 December 2005. He outlined the events of the 17 December 2005 to the Tribunal. He arrived at the hotel at 8 o' clock. He attended the mulled wine reception and he had a glass. The bar was full and he was offered drinks from the bar. KS was given money to buy drinks beforehand. The claimant went upstairs to the function room where he had a meal and he had a few glasses of wine. He had two Bacardi's and coke during the meal, he had three or four more Bacardi's and cokes and everyone appeared to enjoy the occasion. At 2a.m. he was sitting at the table and his jacket was on the back of the chair. There were seven seats on each side of the table. At approximately 2a.m. he felt something sharp on his back and realised that it was drink. KS had just passed by and the claimant went over to him. KS put down his pint and lunged at the claimant with his head. KS fell into the corner and the claimant fell on top of him. The claimant's brother PG picked him up and GK asked the claimant to leave. To diffuse the situation GK called a taxi for the claimant. Under no circumstances did the claimant head butt KS either intentionally or unintentionally. The claimant was a union representative for a number of years and he never resorted to violence.

There was no disciplinary procedure for managers and he did not think that anyone could produce it now. On Sunday at 7.30p.m OM telephoned the claimant regarding the incident. The claimant attended a meeting with GK and OM. The claimant was suspended until the meeting was completed. The claimant asked if there was a complaint and he was informed that there was. On Monday he arrived for the meeting. GK told him that KS had made an allegation against him and that the disciplinary procedure could be in place and the claimant could avail of representation. The claimant asked if mediation could take place and this was refused. The claimant asked if the allegation was in writing, GK told him that it was not in writing but he would relay whatever was said to him. The claimant wanted to put this on record and that would ensure that everyone else did the same but this was refused. He protested his innocence and under no circumstances did he headbutt KS. KS's version that he went over to him and accused him of spilling drink on his coat could never have happened. The logistics were wrong and GK did not ask him questions regarding the possibility of drink on his coat. He stated that he could get the coat if they wanted it analysed.

On 21 January the claimant received a telephone call as to why he did not attend a meeting on the 21 January. He did not receive notice of this and he was asked to come in at 2p.m. He received notification that KS had made a complaint and that was the first time any complaint was in writing. The claimant was asked if he recalled anything new. The claimant asked had KS changed his story and he was told that he had not. The only thing was that KS had not apologised. At the second meeting he now said, "send me the bill" which was meant to be an apology. The claimant gave an accurate account of what happened and now KS wanted to change some part of his "account". Regarding OM and GK's note how could the claimant defend himself on that. One of KS's statements said ten feet and the other ten yards. The claimant expected to rely on an Aide Memoire. He received a letter on the 22 December 2005 three days after the investigation started. In the letter dated 22 December GK believed KS's version and that his account was more accurate. He asked GK what the next steps were and GK told him that he would go away and make a decision. The claimant asked how could they be witnesses when they should be impartial. On the 22<sup>nd</sup> December he was told that he had to attend a

disciplinary meeting on 3 January and that they believed KS's version of events. The claimant decided to bring along a witness. The claimant's union representative MC informed the respondent that he would attend the meeting on 3 January with the claimant and he requested that all relevant papers be available. MC told the claimant that the process was flawed and he said he would allow a third party to come in and adjudicate on the process but this was refused. He also requested that the meeting be held in an off site location and this was refused. MC requested all witness statements to be provided to him and any other information that was relevant.

On 3 January the claimant was informed that the respondent considered itself to be impartial as witnesses in the case and at the same time considered this to be an impartial investigation. The claimant believed that the respondent could not be the judge of its own evidence. Before he was expected to reply to allegations he would have expected these to be in writing and when he asked GK could he make a statement he refused. He was a bit surprised with the situation from the outset. At the first meeting KS had made the complaint. He was surprised that the respondent allowed GQ to be his representative. During KS's interview they also interviewed GQ and then asked KS to become a witness. It was a total shambles. The respondent did not outline its problem and the disciplinary hearing was postponed by GK. On 3 January at 3p.m. he received a telephone call from GK. GK informed the claimant that he had spoken to a union representative who was not happy about the particular person the claimant had representing him. The claimant asked to change his representation. The claimant got a call at 4/5p.m. from GK and he told him he had seen what had taken place

The claimant was being blamed for what KS had done. The claimant telephoned GEK at 7.52 on 4 January and he told GEK that it was his own business and that he could not advise him. GEK telephoned the claimant and told him that he had told the respondent. The respondent had a number of meetings with GEK but it did not believe him as he had a number of drinks taken. GK commented on GEK's drinking. No one could remember how many drinks they had taken.

The claimant asked GK why only some employees were asked how many drinks they had and he responded that these were not issues, which were queried on the aide memoir. The claimant could not understand why GK conducted the investigation and why he relied on two witnesses. KS had asked if the claimant was going to be sacked and he asked could he and the claimant shake hands and forgot about it but GK refused.

The claimant stated that after his dismissal he was treated for ten months for a depressive illness. He had a nervous breakdown and his wife and three children suffered. He has not got over it. He worked hard for thirty-seven years and he was not supported or helped by the respondent. From the telephone call on 19 December the respondent was totally against the claimant. His family doctor treated him. He could not pay his mortgage for twelve months. He still has difficulties due to the large discrepancy between the pay that he earned as a manager with the respondent and the pay he now earns as a taxi driver. The person who made the final decision to dismiss the claimant has moved on to greener pastures. It has been a life sentence for the claimant and he would love to go to Belfast to undertake a similar job. He earns approximately €75 per day and his earnings have decreased by over a thousand euros per week.

In cross-examination asked if striking an employee was a matter of importance he responded that he could not answer that. Asked if head butting was a serious matter he responded that it depended on the circumstances. He could not give a straight answer as to when head butting would not be a serious matter without knowing the circumstances. He did not register with an employment agency. He was in receipt of disability benefit from January to November and he was certified



unfit for work. Asked if his evidence was inconsistent with other witnesses he responded no. Asked if he sat opposite his brother at the table he responded yes and there was no one sitting at the left hand side of the table

A number of people were seated to his right. He saw KS and when asked if KS passed behind him he responded that he had no place else to go. The distance behind him was approximately six feet.

KS was going to the end of the table. A small table was used by the waitress in the corner. KS was going to his table and when asked if he was aware that drink was spilled he responded that he was leaning on the table and he felt something sharp on his back. KS was on the same side of the table and he carried two drinks. KS turned his back on the claimant and put down his two drinks and coat. The claimant was facing the wall, sideways to the table. Asked why did he not sit back down he responded that KS lunged at him and forced him back down. KS's face was close to his and asked if KS was touching him he responded, "I'd say yes". The claimant pushed himself with his hands from the table into him and he fell into a corner. He did not see any blood. Asked how much drink he took he responded that he had mulled wine. He stated that he was not fit to drive but in his opinion he did not have too much to drink and he was not drunk. Asked if he was capable of understanding his behaviour he replied that he had told the truth. He did not head butt KS. He tried to get away and KS was in a very violent mood. Asked if he had dealings in the past with KS he responded that he was a manager and on occasion he issued instructions to KS. Asked if there was a grudge he responded that both the claimant and KS came from the same area. KS recently came from Port and Docks and all managers found him difficult. Sometimes KS would ignore him when he saluted him.

In answer to questions from the Tribunal he responded that he was a general manager and his earnings were far in excess of other managers. His pension was preserved. He did not receive copies of statements and when he obtained some notes he then found some were missing. Asked if there was a letter of complaint he responded no that there was no written allegation. He asked for a written statement and it was refused. Asked if he had a scar from the attack he responded no. KS wanted to apologise and forget about it. The claimant was assaulted and falsely accused and he had nothing to apologise for. The claimant was helped back to his seat and then GK asked him to leave. KS made a verbal complaint on the night.

On 12 November 2007 GB told the Tribunal that he was branch organiser for the taxi union and was a full time official of the taxi union. He has held this position since March 2000 and prior to that he was a taxi driver. At one time he was a trade union official in another capacity. At this point it has two thousand two hundred members including tradesmen and professionals. He outlined in detail the cost of setting up a taxi service to be €9,540.00 for all new entrants in the industry. The overall entry costs for a driver with a new car amounted to €34,000.

In cross-examination GB stated that he had not worked out how much it cost the claimant. The average life of a new vehicle was five or six years and it lost 40% per annum depreciation. A taxi licence was not an asset. The best option was to leave it as part of the vehicle. Very few people wanted to buy a second hand licence. He had not looked at the claimant's figures.

At the Tribunal hearing on 14 February 2008 Dr M. gave evidence that the claimant was his patient for fourteen years. The claimant had never suffered from anxiety and as a direct result of his dismissal he suffered from depression. He suffered panic attacks and was upset, as he could not find a solution to his problems. He could not sleep, he had poor concentration and could not concentrate. On a visit on 15 February 2006 the claimant showed little signs of depression and the claimant was not keen to take antidepressants. He was prescribed a standard dose of 75 milligrams

of medication. He recovered slowly after he took the medication. On one occasion on 4 May 2006 the claimant was crying and he was prescribed antidepressants. He had no income and he had a mortgage to pay. On 8 November 2006 the claimant discontinued his medication. The claimant felt that he was no longer depressed at that date, and Dr. M felt that the claimant was well after six months of treatment.

In cross examination asked when he last saw the claimant prior to 15 February 2006 he replied he saw the claimant on 14 September 2005 after he had stood on a rusty nail. He saw the claimant on 29 September as he had hurt his back while lifting a heavy box at work. He then saw the claimant on 4 May 2006 and on two subsequent occasions after that. The claimant had no psychological problems before his dismissal.

He felt that the claimant was fit to return to work on a gradual basis and he allowed him return after Christmas 2006. The claimant regularly visited Dr. M for a check up for high cholesterol. On 4 January 2007 he saw the claimant for gout and in March 2007 he saw him for a kidney infection. On 16 July 2007 the claimant collapsed after leaving the Tribunal hearing and was taken by ambulance to hospital. He saw the claimant on 17 July 2007 and he gave him a full check up and he was fine except for a fast pulse.

## **Determination**

Section 6(1) of the Unfair Dismissals Act, 1977 states as follows

“Subject to the provisions of this section, the dismissal of an employee shall be deemed, for the purposes of this Act, to be an unfair dismissal unless, having regard to all the circumstances, there were substantial grounds justifying the dismissal”.

Having regard to the following circumstances the fact the incident occurred outside the workplace although work related. Moreover the incident took place at a late hour after a large amount of drink had been consumed by many of those present.

Incidents “at office parties” raise many difficult questions. We would not determine the case on that circumstance alone but it is a circumstance we should have regard to within the meaning of the Act.

KS the other party involved in the incident asked during a later investigation that the matter be settled by shaking hands. The Tribunal would not say that the attitude of a “victim” would be a determining matter.

The central issue of the case however, is which version of the incident we accept as fact. We find the claimant to be a credible witness, and having seen him give evidence we accept his evidence.

We were fortified in his view when we later heard medical evidence. For this reason we find the dismissal unfair.

In our view it would have been wise if GK had not himself conducted the investigation because he was himself a witness to the incident.

We find that the dismissal was unfair.

## Redress

The claimant is seeking reinstatement. Having regard to his long service and the unlikelihood of his ever finding a managerial position comparable to the one from which he was dismissed it is clear that to reinstate or re-engage the claimant to work with a small managerial team would be unrealistic.

In assessing compensation we did not accept the respondent's argument that the claimant contributed to the dismissal because we have accepted the claimant's evidence and find that he was blameless in the matter of the dismissal.

An issue arose as to whether the claimant had mitigated his loss, we are satisfied on the medical evidence that the claimant went out to find work as soon as he was medically able to do so. He is now driving a taxi, where he is earning a modest income. It is clear to us that the claimant is most unlikely to be employed in a managerial capacity with a salary similar to that which he held. Even if his net taxi earnings increased to about €40,000 he would still be earning more than €30,000 per annum less than his previous salary. Over an eleven-year period his differential would be in the region of €300,000. This is a figure well in excess of the ceiling as set down by the Act, which in this case is €154,772. The Tribunal therefore award the claimant compensation in the amount of €154,772 under the Unfair Dismissal Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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