

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM(S) OF:**

Employee

**CASE NO.**

UD466/2007

MN328/2007

WT140/2007

against

Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001  
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. N. O'Carroll-Kelly B.L.

Members: Mr. M. Kennedy  
Mr. G. Lamon

heard this claim at Dublin on 13th September 2007 and 29th November 2007

**Representation:**

Claimant(s) : Mr. Conall MacCarthy BL instructed by Ms Mairead Moriarty, Solicitor,  
Terence Lyons & Co., Solicitors, 4 Arran Quay, Dublin 7.

Respondent(s) : Mr. Stephen Boggs BL instructed by Ms. Geraldine McKenzie, Solicitor,  
Christie And Gargan Solicitors, U2 Stewart Hall, Parnell Street, Dublin 1

The determination of the Tribunal was as follows:-

**Respondent's Case:**

The claimant's Manager (M) gave evidence. He had worked at the company for seven years and had been in a position of management for one and a half years. He was working on Saturday the 11<sup>th</sup> November 2006 and was responsible for calling to various outlets where the respondent was responsible for security. He had to check that all security guards were present on duty and were attired fully in the uniform. M phoned the claimant at 3.00pm (who was on duty in a city centre outlet) and told him that he was required to attend work in a new location on the other side of the city. He was to take his break at 4.00pm when someone would attend to relieve him and then at 5.00pm he would be collected and brought to the new location. The claimant refused to carry out these instructions. M attended the location at 5pm and the claimant was not in full uniform. He had discarded his tie and his jumper. When M asked him why he did not have his full uniform on, the claimant told him not to bother him. M gave him his first verbal warning. The claimant's shift finished at 8.00pm and then he was due to commence the second part of his shift at 12.00am until 4.00am.

M returned to the premises at 3.00am and the claimant was on duty. Again, he was not wearing his complete uniform and M gave him a second verbal warning. M left and then returned to the premises at 4.15am approximately. On this third occasion, the claimant was angry and spoke to M loudly, questioning his authority. M had phoned the managing director (MD) regarding the claimant's behaviour and this is what had upset the claimant. The claimant was aggressive towards M and M tried to calm him down. M told him that if he had any problems he could discuss them on Monday when he was calm. This did not satisfy the claimant and M suggested they go upstairs to a closed area to continue their discussion rather than doing it in public where people were around. M took a seat upstairs and the claimant verbally abused him personally including insults about his family. M pleaded with the claimant to let him go and suggested that he talk to the MD on Monday. The claimant pushed him and when he stood up to leave, the claimant pushed him again and said "sit down there". The claimant pulled off M's tie (which was a clip-on tie) and was very angry at this stage. When M went home, he was very upset and he decided to report it to the MD. M phoned the MD at 5.30am and the MD said that he would speak to him on Monday.

The MD, M and the claimant met at the location on Monday 13<sup>th</sup> November at 7.00pm. The claimant was due to be on holidays and had attended the meeting specially. The reason for the meeting was to address the claimant's behaviour on the previous Saturday night. MD spoke to the claimant and gave him an opportunity to give his side of the story. MD said that the claimant's behaviour was unacceptable abusing a supervisor and when the claimant returned from holidays, the MD would speak to him again. *M said that that night the claimant's employment was terminated but at that stage he was still employed at the company.*

Under cross-examination, M said that the dispute had arisen regarding the claimant not wearing his uniform. The claimant had phoned the MD on the Saturday night at 12.00am to check in for duty and this was a requirement of the job. The MD had requested that M collect the claimant and bring him to the new location for work. The claimant refused to go and did not give any reason for this. It was not usual for supervisors or managers to give warnings on the spot. M did not refuse the claimant his holidays. That would be a decision for the MD. The claimant was not suspended at the meeting on the 13<sup>th</sup> November. This occasion was the first time that M had observed the claimant out of uniform. The claimant was only required to attend the new location for that night.

On the **second** day of the hearing the Managing Director (MD) gave evidence. The claimant was employed as a security officer in a supervisory position for the respondent.

He explained that he had not been present in the fast food premises the claimant and his Manager (M) was working in on November 11<sup>th</sup> 2006. He had received a call from M at 4.30 pm. The witness explained that the respondent had acquired a new client in Ballymun and it was normal policy for a supervisor to attend the premises of a new client. M had asked the claimant to go to the new premises in Ballymun but he had refused. He told M to send someone else.

Early the next morning, between 4.30 and 5.00 am, he received another call from M informing him that the claimant had not been wearing his uniform while working that evening.

The claimant had also been abusive towards M. On November 12<sup>th</sup> 2006 he contacted the claimant and asked him to meet him in the city centre outlet the following day even though the claimant was to be on annual leave. The claimant agreed. The following day the witness and M met with the claimant. The claimant was thanked for attending as he was on annual leave. The witness stated that he liked the claimant and was surprised at his behaviour the previous Saturday night. The witness told the claimant that his behaviour had been unacceptable and his attitude towards M, the

comments made about his family was also unacceptable and also the fact that the claimant had not been wearing his full uniform. He told the claimant that he would review his status. He thanked the claimant and asked him to meet him the following Monday at 7.00pm but the claimant never turned up to.

When asked if M issued warnings or had the authority to suspend staff, he replied yes. He explained that M had the authority especially if staff were drunk, had taken drugs or had to be sent home to retrieve their full uniform. It was his job to dismiss staff. He explained that the respondent company issued a full uniform to all staff with the company logo on it. Both customers and clients expected to see his staff in full uniform. When asked, he said that there was a complaints procedure in place and staff handbooks were available in all of the client's premises.

On cross-examination the witness stated that it was normal to move supervisors mid shift. The claimant had done this in the past. He explained that M compiled the staff rosters. He stated that when M rang him on the morning of November 12<sup>th</sup> 2006 he was very upset. When asked, he said that there had no previous problems with the claimant or his uniform. When asked, he said that at the meeting with the claimant on November 13<sup>th</sup> 2006 the claimant stated that he had nothing to explain and to do what he, the witness, wanted. He refuted that he had refused to accept the claimant's written statement of events. He stated that M was present when he told the claimant that he would be reviewed and that the matter was not finished. He told the Tribunal that it was not an official meeting. There was no mention of suspension.

When asked about the complaints procedure in place, he said that complaints were to be put in writing. When asked, he said that the claimant did get breaks during his shift. When asked, he said that there had been small issues with the claimant in the past but that they had been dealt with "off the record". He refuted that the crux of the problem with the claimant was that he would not go to the new clients premises. When asked, he said that policy on the non-wearing of the uniform warranted a verbal warning. He refuted that the claimant had been given the roster for the following week as he was on annual leave. He gave details of the claimant's salary.

The witness told the Tribunal that the claimant had not contacted him after November 13<sup>th</sup> 2006. He explained that, on that evening, thirteen staff had walked away from their posts between 8.00pm and 10.00pm. He said that he was not aware what the claimant had told the staff what had occurred. The witness stated that the claimant had not been dismissed, but had not returned to work. He was not aware where the claimant was now employed. When a letter was read to the witness from another security firm, he stated that he was unaware where they had retrieved the information stated.

When asked by the Tribunal he said that the security firm that authored the letter read out at the hearing had not contacted him. When asked had he copies of verbal warnings given to the claimant, he said that M had them at home in a diary. When asked about the night other staff walked out, he explained that he had suspended another staff member that evening and the claimant had been outside the premises when it had occurred. He stated that he felt the claimant and this other staff member caused the staff to walk out. When asked why he did not do anything about the matter, as he could do nothing as the claimant had been on annual leave.

When asked if he had a copy of the complaints procedure, a list of PSA trained staff or accounts available at the day of the hearing, he said that he had not. When asked, he said that he had seen video footage of the night of November 12<sup>th</sup> and could see the claimant's body language.

## **Claimant's Case:**

The claimant gave evidence. He gave the Tribunal of his history of employment with the respondent company. He stated that wherever he was asked to work, he went. He explained the rosters submitted and said that breaks were listed on the roster. He was promoted to supervisor in May 2006 and worked with M at the time. M compiled the rosters and the claimant checked the various locations manned by staff. M and the claimant had the same authority.

On November 11<sup>th</sup> 2006 he started work at 12.00 pm. His shift rostered that day was 12.00 pm to 8.00 pm then 10.00 pm to 4.00 am. There was no break between 4.00 pm and 5.00 pm. After 5.00 pm he received a call from M telling him to go to another location across the city. He could not go at that time and told M. He also asked why he had been asked earlier on that day but was told he had to go. The claimant remained where he was. M arrived on the premises around 6.00 pm and went to the counter. The claimant followed him and tried to speak to him. The claimant said that M swore at him. He went back to his position. Later that night, around 12.00 am, M entered the premises again and tried to give him a roster issued by MD. He told M that he was not taking the roster and would speak to M the following day. M replied that he was no longer a supervisor and would revert back to an hourly rate of pay. M left and returned at 1.00 am. They worked till around 4.30 am then went upstairs to talk. They argued about the roster and the fact that the claimant could not have gone to the other premises by 6.00 pm. The meeting went on for about fifteen minutes. The claimant said that he had not forced M to remain upstairs that evening. The claimant went home.

The following day he received a call from MD to come to a meeting. He attended the meeting with MD and M and brought a written statement of events with him. He tried to give it to MD but he refused to accept it saying he wanted a yes or no answer to one question. The question was had he insulted M. He again tried to hand over the statement but was informed by MD that he was suspended the following week. He was told to speak to M in two weeks time to discuss the matter. He said that he was not asked to apologise to M.

When his leave was finished he tried to contact M to know what was happening. He was informed that he was on suspension and would speak to him the following week. The following Monday he again rang MD and was again told he was suspended and would speak to him the following week. The following week he again rang MD and was informed that that they had had a good time with him working there but that he insulted M. He was told he would get a reference and to "walk away". He begged to stay.

Some weeks later he rang MD and was later contacted by M, as he had not received his holiday pay. M asked to meet him. M tried to get him to sign a piece of paper and was told if he signed it he would receive a cheque. He received the cheque in late December 2006. He received his P45 three months later. The claimant gave evidence of loss.

On cross-examination he stated that he had not been contacted around 3.00pm on the day of the incident to go to the other premises across the city. He stated that he was in full uniform on the day in question. He said that he had not received two verbal warnings that day. He stated that MD had been very angry at the meeting on November 13<sup>th</sup> 2006. He said that there had not been any meeting arranged for November 20<sup>th</sup> 2006 and he had been informed that he was suspended. When asked, he said that he had received his holiday pay in December 2006 but that there was no payslip enclosed.

On re-examination he stated that he did work more than his rostered hours, checking out the other

premises.

When asked by the Tribunal, he stated that he had commenced employment with his new employer on December 14<sup>th</sup> 2006. MD had dismissed him on December 5<sup>th</sup> or 6<sup>th</sup> 2006. When asked, he stated that he had not been aware that staff had walked away from their posts on the evening of November 13<sup>th</sup> 2006.

**Determination:**

Having heard all the evidence adduced by both parties over the two days of the hearing, the Tribunal finds that the claimant was unfairly dismissed and that his dismissal was procedurally unfair. Accordingly the Tribunal awards the sum of € 1,000.00 under the Unfair Dismissals acts, 1977 to 2001.

Loss having been established the Tribunal awards the claimant the sum of € 1,000.00 (this being two week's gross pay) under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

No evidence was adduced in relation to the claim under the Organisation of Working Time Act, 1997 and therefore the claim fails

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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