

## **EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

Employee

UD721/2007  
MN582/2007  
WT245/2007

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: Mr. B. Garvey B.L.

Members: Ms. A. Gaule  
Mr. S. O'Donnell

heard this appeal at Dublin on 10 & 11 March 2008

#### **Representation:**

Claimant:

Mr. Conor Bowman B.L. instructed by Mr. Stan Murphy  
on the first day, Ms. Mary Butler on the second day,  
both of Murphys Solicitors, Mount Clarence House,  
91 Upper Georges Street, Dun Laoghaire, Co. Dublin

Respondent:

Mr. Tim O'Connell, IBEC, Confederation House,  
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

The claimant was employed as a crewmember in the respondent's cash in transit operations from April 2000. As a result of a breach of standard operating procedures on 6 December 2005, the claimant received a final written warning on 2 February 2006 from the cash services manager (CSM). The claimant did not appeal against this warning. As a result of a breach of standard operating procedures on 18 July 2006 the claimant received a further final written warning and three days suspension without pay on 4 August 2006 from the Area Manager (AM). Following a reorganisation within the respondent AM had replaced CSM. Again the claimant did not appeal against this warning. Final written warnings have a shelf life of nine months under the disciplinary

procedure agreed between the respondent and the claimant's trade union.

On the morning of 2 March 2007 the claimant was a member of a three-person crew making a cash delivery to an ATM when a robbery occurred. The claimant was in the room where the ATM safe is located when the robbers opened the outward opening door to this room. Standard operating procedure dictates that the room door is to be closed and locked at all times except when a crewmember is gaining access to or egress from the room. It is common case that the door was closed but not locked when the robbers struck. Due to a technical problem with the ATM it was necessary to reset the ATM in order to complete the service to it. This presented an opportunity for another crewmember (CM2) to take a toilet break in the adjacent toilet, the door to which is some two metres from the room door. CM2 was in the toilet for the duration of the robbery. Later in the morning AM and the security liaison officer (SLO) attended at the scene of the robbery, spoke to all members of the crew and counselled them. AM and SLO carried out an inspection of the robbery scene. SLO took statements from all three members of the crew on 8 March 2007. In those statements both the claimant and CM2 stated that the room door was hard to close. The respondent's position is that the door was not hard to close and there had been no complaint about this door during the many times it had been used prior to 2 March 2007. It is further their position that in the time available to the claimant after CM2 left the room to go to the toilet there was sufficient time for the claimant to have closed and locked the room door. The claimant's position is that he was in the act of locking the door when the robbers struck.

SLO, who did not give evidence to the Tribunal, prepared a report arising from the robbery. As a result of this report, which was not opened to the Tribunal, AM instructed ABM to carry out an investigation into what were described as inconsistencies between the statements of CM2, the third crew member (CM3) and the claimant. Following his return to work after sick leave as a result of the robbery the claimant was interviewed by the assistant branch manager (ABM) as part of an investigation into possible breaches of procedure on 2 March 2007. This investigative meeting took place between the claimant and ABM in the presence of the claimant's shop steward on the afternoon of 15 May 2007. ABM did not speak to either CM2 or CM3 about the events of 2 March 2007. Following his meeting with the claimant, ABM discussed the matter with AM on the evening of 15 May 2007. ABM then sent an email, essentially ABM's notes of the investigative meeting, to AM at 8-06am on 16 May 2007. The claimant was called to a disciplinary hearing at 11-00am on 16 May 2007. The claimant, his shop steward, AM, ABM and a human resource officer attended this hearing. No written notification of this meeting or the alleged breaches of procedure were given to the claimant. Following the disciplinary hearing AM wrote to the claimant on 17 May 2007 to confirm his decision to dismiss the claimant with effect from 18 May 2007. The claimant exercised his right of appeal to the human resource manager (HR) and this appeal was heard on 28 May 2007 in the presence of the claimant, his shop steward and AM. The claimant protested at the presence of AM at the appeal hearing but, after consultation with his shop steward, agreed to continue with the appeal. HR wrote to the claimant on 30 May 2007 to confirm that his appeal had failed and his dismissal stood.

At the conclusion of the respondent's evidence the claimant's representative sought a direction from the Tribunal that the dismissal was unfair on the basis that the respondent's procedures were fundamentally flawed on the basis that AM, having been involved in the initial investigation into the robbery, and having formed the view on 2 March 2007 that the door was not locked at the time of the robbery, was essentially the complainant against the claimant as well as being the decision maker in the disciplinary process. It was further contended that ABM, having been directed to carry out the investigation by AM, was essentially there to collate the facts. Finally it was contended that it was inappropriate for AM to have been present at the appeal stage as he had been the decision

maker in the initial decision to dismiss. When the Tribunal refused this request the claimant's representative declined to call evidence on the matter of whether the claimant's behaviour warranted dismissal. It then emerged that the claimant had been unavailable for work since the dismissal.

**Determination:**

After careful consideration of the conflicting evidence the Tribunal has come to a majority decision in this case with Mr. O'Donnell dissenting. The majority find that the procedures adopted by the respondent were not such as to prejudice the claimant's right to fair procedures. In those circumstances the majority find that the respondent has shown that there were substantial grounds justifying the dismissal and it must follow that the dismissal was not unfair. Accordingly, by the afore mentioned majority, the claim under the Unfair Dismissals Acts, 1977 to 2001 must fail. The claims under both the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and the Organisation of Working Time Act, 1997 were withdrawn at the outset of the hearing.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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