

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD1052/2006

against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr. C. Ormond  
Mr. G. Whyte

heard this claim at Dublin on 19 June, 28 August,  
and 31 October 2007 and 11 March 2008

#### **Representation:**

Claimant:

On the first two days, Ms. Martina Connolly,  
on the subsequent days Ms. Maria O'Mahony  
both of Taylor & Buchalter, Solicitors, Greenside House,  
45-47 Cuffe Street, St. Stephens Green, Dublin 2

Respondent:

Mr. Paul Dunne, IBEC, Confederation House,  
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

The claimant was employed from April 2004 as a clean room operative at a large pharmaceutical site, one of several clients where the respondent provides clean room services. The claimant was issued with a final written warning on 15 February 2005 for leaving site without permission, clocking out another member of staff, unacceptable behaviour on site and failing to adhere to grievance procedures. This warning had a shelf life of twelve months.

On 15 July 2006 the claimant wrote to both her shift co-ordinator (SC) and the clean room team leader (TL) with a specific complaint of sexual harassment by a fellow worker (FW). In this complaint the claimant acknowledged that whilst FW had apologised she had not accepted his apology. The claimant wrote again on 30 July 2006 to SC and TL to seek follow up on the

processing of her complaint. Whilst there was no formal response from the respondent to this complaint it is common case that arrangements were made, where possible, to keep the claimant and FW apart by having them work different shifts. The claimant's position was that the incident referred to in her letter of 15 July 2006 was not the only instance of sexual harassment by FW.

Early in the night shift on the evening of 29 August 2006, an incident occurred in the vicinity of the third floor janitor's room. This incident, which began with a dispute over the closing of the janitor's room door, led to a fight between the claimant and FW. Following this fight FW, who was complaining of assault, spoke on the telephone to the human resource manager (HR); HR told FW to go home and interviewed him the next day. The claimant completed her shift and when she reported for her next shift on 1 September 2006 she was instructed by the contract manager (CM) to report to head office where she met HR and the human resource director (HRD). A co-worker (CW) accompanied the claimant. Allegations about the events of 29 August 2006 were put to the claimant from statements read to, but not shown or given to her, of four workers including FW. None of these four gave evidence to the Tribunal. The claimant was suspended with pay pending a further meeting scheduled for 5 September 2006. In the event the claimant did not attend this meeting. HRD wrote to the claimant on 5 September 2006 to state that, following her failure to attend the meeting that day, unless she contacted him the outcome would be communicated by letter. Consequently on 7 September 2006 HRD wrote to the claimant stating that she was dismissed for fighting on site, an offence of gross misconduct. The claimant was advised of her right to appeal the decision but chose not to invoke the appeal process.

**Determination:**

It is the view of the Tribunal that the lack of proper procedure was evident in the company, and such procedures as they had were totally inadequate. It would appear from the evidence that a very serious fracas erupted in the workplace, but it is difficult to understand which of the parties were responsible for initiating the fracas, and for its continuation. The Tribunal has no function in commenting on this particular fact, it is however greatly concerned that in the particular circumstances of this case, there seems to have been a breakdown of communication between the claimant and the respondent, which confirms the view of the Tribunal already expressed as to the lack of proper procedures. Accordingly, the Tribunal finds that the Appellant was unfairly dismissed, and directs that she be re-instated under the terms of section 7(1)(a) of the Unfair Dismissals Act, 1977.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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