

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO.  
UD121/2007, RP41/2007

Against

Employer

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**  
**REDUNDANCY PAYMENTS ACTS, 1967 TO 2003**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mrs M. Quinlan

Members: Mr B. Kealy  
Ms K. Garvey

heard this claim at Wicklow on 6th May 2008

### **Representation:**

Claimant : B.J. O'Beirne & Co., Solicitors, 3 Church Buildings,  
Main Street, Arklow, Co. Wicklow

Respondent : Ms. Helen Barry, IBEC, Confederation House, Waterford  
Business Park, Cork Road, Waterford

The determination of the Tribunal was as follows:

### **Respondent's Case**

The manager of this retail store expressed the respondent's satisfaction with the claimant's work performance prior to October 2006. That attitude adversely changed when the company became aware of certain discrepancies in his clocking in and out timings. The witness attended a disciplinary hearing to address the claimant's possible breaches of the clocking policy on 20 October 2006. He was accompanied by the company's human resource manger. The claimant declined a written offer to have a representative at that meeting. The witness was aware of the procedures for the clocking system and knew of the disciplinary consequences. He did not deny breaking those procedures. Together with the human resource manager the witness reviewed the notes of that meeting and considered the options open to the respondent. As a result of that exercise the respondent dismissed the claimant. His position as delivery van driver was replaced.

The human resource manager justified that dismissal on the grounds of gross misconduct. The

respondent regarded the claimant's abuse of the clocking system as a breach of trust. A subsequent appeal hearing upheld the original decision to dismiss the claimant.

### **Claimant's Case**

The claimant acknowledged he received a contract of employment from the respondent. However, he never noticed any signs about the clocking system and did not realise non-compliance with that procedure was such a serious offence. The witness accepted he clocked out a close relative on two occasions in October 2006 on humanitarian grounds for short periods and emphasised this was not done with defraud in mind. The respondent rejected his offer to make amends for that transgression. The claimant only received notification of the disciplinary hearing on the morning of its occurrence and noted the lack of detail on the nature of that meeting.

### **Determination**

Having heard and considered the adduced evidence the Tribunal finds that the claimant's dismissal was fair in the circumstances. Trust and confidence goes to the heart of a working relationship between employer and employee and in this case the claimant undermined that connection when he choose to disregard the clocking procedure. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

There was no compelling evidence advanced to show that the termination of the appellant's employment was by way of redundancy. Consequently, the appeal under the Redundancy Payments Acts, 1967 to 2003 falls.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

