

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

MN739/07

CASE NO.

UD945/07

Against

2 Employers

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr F. Moloney
Mr. S. O'Donnell

heard this claim at Dublin on 11th February 2008 and 30th April 2008.

Representation:

Claimant : In Person

Respondent: Ms Claire Hellen, IBEC, Confederation House, 84/86 Lr. Baggot Street,
Dublin 2.

The determination of the Tribunal was as follows:-

Respondent's Case:

The Human Resources Manager (HRM) gave evidence. She stated the claimant was employed as a Home Support Worker under the Slan Abhaile Service. This service provides care to clients within their own homes. The Home Support Worker's duties include offering personal care, doing household chores and bringing clients out into the community. Some clients need high-level support - others low level. The claimant worked with clients aged over 65 years of age. He received his contract of employment on 7th June 2005. His basic hours of work were 15 hours perweek.

HRM stated that the claimant applied for the post of Team Leader. The position was advertised both internally and externally. The claimant was interviewed but was unsuccessful. His understanding was that he would be invited to a second stage of the interview process. He was most unhappy and met with the Home Based Service Manager (HBSM) and HRM to air his grievance. At that meeting the claimant spoke loudly and was asked to lower his voice. His behaviour was intimidating and he became aggressive according to HRM. By letter dated 12th April 2006 the claimant was asked to attend at the office in Blackrock with his GNIB card and relevant permit, passport and visa. Subsequently a member of staff received persistent phone calls, which were aggressive and intimidating. The claimant even approached this staff member on a bus and spoke aggressively towards her.

Under cross-examination the claimant asked HRM if his application for the post of Team Leader was discussed by management. HRM had no knowledge of the claimant's application being discussed. The claimant said that a colleague asked him if he had applied for the Team Leader position and, if so, to be careful as no matter how good he was he would not be chosen for the job. In response to a question from the Tribunal at this stage the claimant said that this colleague was not going to be called to give evidence.

The HR Business Partner (HRBP) then gave evidence. She said that she worked with the respondent from January 2002 to 14th June 2006. She explained that when the claimant was called for interview he did not have his GNIB card. In 2005 while checking through files she realised these cards needed to be updated. In January 2006 she instructed Team Leaders to have all cards updated including the claimants. She raised this issue again in March 2006 and the claimant received a letter requiring same. In the absence of the claimant's GNIB card he was taken off the payroll for several weeks. HRBP together with HBSM interviewed the claimant for the position of Team Leader. During the course of the interview it was noted that the claimant did not appear to have a clear understanding of the role of Team Leader. When the claimant received confirmation that he had been unsuccessful he became very agitated and insisted on having feedback on his interview. Subsequently, a meeting was arranged for 2nd June 2006.

Under cross-examination HRBP explained that everyone else had up to date GNIB cards. The claimant asked HRBP if he had intimidated her on the bus by saying out loud that she had not returned his calls. HRBP felt intimidated by his tone of voice. The claimant said he only asked her did she get his calls.

The Home Based Service Manager (HBSM) gave evidence. She was responsible for the home support services. In March 2006 she received a number of complaints from clients about the claimant. His punctuality was not good and staff in administration did not like the way the claimant spoke to them. HBSM outlined the home support worker role. Their clients rely totally on the home support worker. It is important that the worker attends on time. Regularly the claimant was thirty to forty five minutes late arriving at the clients' houses. In 2005 she met the claimant and outlined the important service the respondent was offering, the on call policy, the procedures to be adhered to when running late and she gave the claimant another handbook. Any client can object to having a home support worker call to his house.

There were complaints about the claimant's punctuality. Seven clients out of eighteen whom the claimant looked after lodged complaints about the claimant. It was becoming more difficult to give the claimant a fifteen-hour rota. The claimant often changed his availability. The rotas were prepared on a Tuesday and posted out on a Wednesday. If a home support worker needed to change his times a phone call or a text message was required.

After the meeting on 2nd June 2006 with the claimant HBSM asked him to put any issues in writing and that they would be addressed. Another meeting took place on 29th June 2006 and some of the issues discussed on 2nd June were again raised at this meeting. Seven complaints were received by the respondent concerning the claimant's unreliability and his punctuality. The claimant then said he was being subjected to capital punishment. He said if he were to take an action that would affect the company. He said he did not want to do this but that he might have no option. That meeting was terminated due to the claimant's tone of voice and his aggressiveness. The claimant's behaviour did not improve. He shouted at a team leader on one occasion and asked if she could change his duties. The claimant continuously failed to adhere to company policy. He complained about not receiving his rota in advance and rotas in general.

The HBSM outlined the policy on workers using taxis. For workers having to attend work earlier than the bus/dart start time, taxi vouchers are issued. The taxi driver takes the voucher and invoices the respondent. The claimant on occasion used taxis for his own personal use.

On 28th September 2006 the claimant requested a meeting. He arrived late. He wished to discuss his expenses. It was explained to the claimant that the taxi vouchers did not match his rotas. He had submitted 6 months vouchers together. Three time sheets were missing. His expense forms with copies of his timesheets had been handed back to the claimant to be resubmitted correctly. The claimant spoke about not being paid the previous week because he had not submitted his timesheet on time. He said he had dropped the timesheet into the office the previous Saturday after work. Staff outside in an open plan office overheard the claimant shouting at the meeting. When the meeting ended the claimant came out into that office and starting shouting at a member of staff. Two other staff became very concerned.

A report was prepared and submitted to the Human Resources Department in respect of the claimant. The matter was handed over to the HR Manager.

Under cross-examination HBSM said she could not recall the claimant apologising to a member of staff after he had shouted at her. Regarding the time sheet not being delivered on time one week, HBSM said she opened the post herself on the Monday in question and the claimant's sheets were not there. Hence he could not be paid that week. Regarding his interview for Team Leader, the claimant said he was told he would be called for second interview. HBSM said that this was untrue.

The claimant said he did not like being put on speaker phone. HBSM said if the conversation with the claimant was in any way inappropriate or unprofessional she would put him on speaker phone but not for personal matters. The claimant asked HBSM why she did not give him batteries for his panic alarm. HBSM said everyone received panic alarms and batteries.

The Director of Operations gave evidence. Six serious allegations into the claimant's inappropriate behaviour were reported. As a result of these serious allegations, she and HBSM arranged a meeting with the claimant on 6th October 2006. Due to the claimant having a pre-arranged medical appointment the claimant agreed to the alternative date of 9th October 2006. The claimant did not attend that meeting and refused to discuss the planned content of the meeting with the Director of Operations in a telephone conversation that day.

Following due consideration a decision was made to suspend the claimant on full pay pending a full investigation into these allegations, in line with the disciplinary procedure. The claimant was paid

15 hrs per week in line with the terms of his contract.

An investigatory team was appointed with terms of reference. The Team was instructed to report back to the Director of Operations in due course. Upon receipt of the investigatory report the Director determined that the allegations were serious and a disciplinary meeting was convened for 31st May 2007. The claimant indicated that he could not attend this meeting, as his union representative was unavailable. Subsequently, the claimant had telephone conversations with both the Director of Operations and the HR Manager and was most threatening. The disciplinary meeting was re-scheduled for 12th June 2007. The Director of Operations explained that she would not be available to attend that meeting due to pre-arranged leave but that the Director of Training and Employment Services would convene the disciplinary meeting in her absence.

Under cross-examination the Director of Operations explained that the claimant was suspended in line with disciplinary procedures. She found the claimant threatening with such a loud voice. The Director of Operations explained that the claimant had agreed to attend the meeting of 9th October 2006 to discuss the serious allegations made against him and then changed his mind. She offered to meet the Claimant at another time that day. The Director of Operations felt she had no alternative but to suspend the claimant by letter dated 9th October 2006.

One of the investigating officers (A) gave evidence. Serious allegations had been made against the claimant and several staff members were interviewed. The allegations included complaints from clients, inappropriate behaviour during and after meetings, punctuality and inappropriate use of taxis without authorisation. Based on these allegations six witnesses were interviewed individually and provided written statements. The claimant attended two investigatory meetings with both herself and the other appointed investigatory officer.

Copies of the minutes of the investigatory meetings, which the claimant attended, were furnished to him and he provided seven pages of amendments to these minutes.

A report was furnished to HR. Based on the findings, the claimant was suspended from duty on 9th October 2006. It was recommended the claimant be instructed to attend a disciplinary hearing under the terms of the disciplinary procedure.

The Director of Training and Employment Services (DTES) gave evidence. She chaired the disciplinary meeting convened to consider certain allegations made against the claimant. The two investigatory officers, the Human Resources Manager, the claimant, his female union representative and also a male union representative were present. The claimant had been provided with all the necessary documents in advance of the meeting. The union representative sought clarification as to why documents had only been furnished to them a week previously. DTES's understanding was that the claimant's solicitors would be representing him at the hearing as the respondent had previously received documentation from the solicitors saying the claimant engaged them.

The claimant stated that he had been dissatisfied with the investigatory process. He requested that the meeting be video-taped to ascertain the truth. The two investigatory officers outlined the investigatory process they had conducted. The witnesses interviewed by the Investigatory Team were called to the meeting and the claimant asked that they take the oath.

The claimant questioned the first witness in an intimidating manner. He spoke loudly and aggressively. He was asked to lower his voice and be respectful. The witness became very upset and DTES asked her to leave the room. The claimant then said he was unwilling to participate in

the formal disciplinary hearing and left the room. His SIPTU representatives then left. The disciplinary meeting continued in their absence.

DTES believed there was sufficient evidence and inappropriate behaviour to warrant the claimant's dismissal. She looked through all the allegations and statements furnished and her ultimate decision was that the claimant be dismissed for gross misconduct and to terminate his employment.

Under cross-examination DTES believed the claimant was afforded a fair hearing. It was company policy not to videotape any meetings. During the course of the disciplinary meeting, DTSE called the claimant's union representative back into the meeting and explained that the meeting was continuing in their absence and to inform the claimant accordingly. The claimant had no further questions of this witness.

Claimant's Case:

The claimant believed he was a most valued staff member of the Home Support Department. He raised a number of issues which he believed to be untrue. During the period February to April 2006 the claimant said he could not have used taxis to come to work as he was suspended. HBSM told him he was not wanted by several clients but she refused to give him the names of the clients in question. On one occasion, his immediate line manager had directed that he help a client for one and a half hours and after one hour she directed he go to another client. The first client's wife was very unhappy that he left and reported this to head office. On another occasion he was sent to an incorrect address and the client's wife insisted he leave at once and she called the Gardai. The Gardai questioned him and arrested him and took him back to Head Office. He asked that HBSM tell his Line Manager of his arrest but she never did.

The claimant had to use his own personal money for taxis while taxis were provided for those employees living far away. He denied he used taxis for his own personal use. The reason he presented his taxi expenses altogether was that at that time his brother had died and he needed money. The respondent had asked that all outstanding taxi receipts be submitted urgently and the claimant explained that some of the receipts submitted could have been for his own personal use and he asked HBSM if he could go through them again and she refused to let him see them at that time but said he could at a later stage. The claimant said he never used the company's money wrongly.

When he applied for the post of Team Leader, while engaged in a conversation with others he heard he would not be offered the position. He believed he performed well at his interview and that he made a good impression. Afterwards, he shook hands with the interviewers and was told they would be in touch.

The claimant believed his immediate Line Manager caused most of the problems. She did not know her job. When a new Line Manager was appointed he said things ran smoothly.

HBSM refused to give him working materials and he felt aggrieved. He had wanted to talk to HR but HBSM said he must channel his queries through her. He believed his queries would not be discussed with HR and would be blocked by HBSM. The claimant also said that HBSM called him a thief.

Finally, the claimant said that most allegations were false, unsubstantiated and completely untrue.

He spoke loudly and this seemed to portray to staff members that he was aggressive and angry. This was untrue. He enjoyed his job with the respondent very much and gave his best service. His career was now destroyed. The respondent did not give him a reference and treated him unfairly.

The claimant gave evidence of his losses to the Tribunal.

In reply to the evidence given by the claimant the respondent said the identity of the clients who made complaints were not revealed to him because it was in line with company policy. The respondent said the claimant was told numerous times to utilise company procedures to raise his concerns. The claimant had already been furnished with a list of unauthorised taxis he had used.

The Chairman of the Tribunal then asked the claimant and the respondent if they were finished giving evidence or if either party had any other submissions to make. Both sides indicated that they were finished.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. The respondent has a fundamental duty of care to its vulnerable elderly clients and properly investigated the serious allegations regarding the claimant's behaviour. During the course of his employment the claimant was at all times told to put any issues or grievances in writing to the respondent, yet he failed to do so. It is clear to the Tribunal that serious matters concerning the claimant's attitude towards his work and his superiors had arisen during his employment with the respondent company which culminated in the decision to suspend him on 9th October 2006. After the completion of a full, fair and thorough investigation the claimant was dismissed by letter dated the 18th June 2007. The Tribunal notes that the claimant failed to avail of the appeals mechanism open to him subsequent to his dismissal. In the circumstances the Tribunal determines that it was not unreasonable of the respondent to dismiss the claimant. Therefore, the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

The Tribunal notes that the claimant did not receive the two weeks notice to which he was entitled under the Minimum Notice and Terms of Employment Acts, 1973 to 2001. In the particular circumstances of this case the Tribunal finds that the claimant should have been given two weeks notice or payment in lieu thereof. The Tribunal therefore awards the claimant €312.30 being the equivalent of two weeks wages.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd) _____
(CHAIRMAN)