

## EMPLOYMENT APPEALS TRIBUNAL

Claims of:  
Employee

Case No.  
UD87/2008  
MN69/2008

against  
employer

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. J. Sheedy

Members: Mr. M. Forde  
Mr. D. McEvoy

heard this claim at Clonmel on 23rd July 2008

#### **Representation:**

Claimant: Mr. Brian D. Hughes, Brian D. Hughes & Co., Solicitors, "Longmall",  
Slievenamon Road, Thurles, Co. Tipperary

Respondent: Ms. Deirdre Lyons, Butler, Cunningham & Molony, Solicitors,  
71 Liberty Square, Thurles, Co. Tipperary

#### **The determination of the Tribunal was as follows:**

##### **The Evidence:**

The claimant commenced employment with the respondent in November 2004 as a butcher. The claimant received a first written warning on the 12 June 2007 for problems with his time keeping. A first written warning is the third stage of the company's disciplinary procedure.

In the early hours of the 5 January 2008, Manager M received a telephone from the store manager outside working hours. The store manager told Manager M that he was socialising when the claimant beat him. Manager M went to meet the store manager and saw that he was badly beaten.

The claimant was due to work the 7 January 2008. When he attended for work Manager M told the claimant that he was going to investigate the incident. The claimant was suspended with pay for one week. The claimant received letter dated the 8 January 2008 informing him that he was suspended with immediate effect pending an investigation. The claimant was asked to attend a disciplinary meeting on the 14 January 2008.

There were a number of people present at the meeting on the 14 January 2008 including the claimant, Manager M and the Head Butcher. The claimant was invited to give his version of events. The claimant told them he was socialising on the night of the 4/5 January 2008. The claimant heard the store manager was talking about him and he confronted him.

The claimant stated at the disciplinary meeting that what had happened was not all his fault. It was the claimant's evidence that the store manager hit him first and he defended himself. Manager M told the claimant he needed to investigate the matter further. The claimant was suspended for a further time. During January 2008 the claimant requested a copy of the terms and conditions of his employment and this was provided to him. Manager M stated that the claimant also received a copy of his terms and conditions when he commenced employment. The claimant gave evidence that he signed a document entitled "Conditions of Employment" in January 2005. However, he was not given the other document entitled "Terms and Conditions" until January 2008.

A second disciplinary meeting was held on the 16 January 2008. Manager M provided the claimant with the statements of the store manager and the witness to the incident. The claimant was invited to comment on the store manager's statement but he did not say anything. The claimant stated in evidence that he did not see these statements prior to the meeting. The claimant gave his statement at this meeting.

After the meeting Manager M reflected on the incident with the owner and another manager and decided that the severity of the incident warranted the dismissal of the claimant. He also took into account that the store manager was afraid to return to work after the incident. Manager M considered that the claimant's actions constituted serious misconduct as outlined in the company's disciplinary procedure.

A meeting was held on the 18 January 2008 and the decision to dismiss was communicated to the claimant. The claimant was also provided with a letter outlining the decision. It stated that the claimant had the right to appeal the decision but he did not do so. The claimant gave evidence that he was unaware of how he could appeal his dismissal and he had already been provided with his P-45.

The claimant gave evidence relating to loss.

During cross-examination it was put to Manager M that the claimant did not receive a copy of his terms and conditions until January 2008. Manager M replied that he could not locate a copy of this document signed by the claimant as a number of documents were lost during renovations.

It was put to Manager M that the claimant's terms and conditions stated that an employee "has the right to appeal against any disciplinary action" but it does not give details of how an employee can appeal. Manager M replied that the claimant could have appealed to any manager or the owner. Manager M accepted that the respondent does not have a written appeals procedure but the claimant was told in letter dated the 18 January 2008 that he had the option of appealing the decision. Manager M stated that a person involved in the decision to dismiss the claimant would possibly have heard the appeal.

It was put to Manager M that letter dated the 18 January 2008 informed the claimant that his P45 would be sent to him. Manager M replied that the claimant's employment was terminated but if the claimant appealed the decision he would be re-instated while the appeal was carried out.

It was put to Manager M that the claimant had complained to him about the store manager on a previous occasion. Manager M recalled the incident but he did not recall the claimant making a complaint.

Answering questions from the Tribunal, Manager M stated that he made the decision to dismiss the claimant because some of the claimant's statement did not seem true and because the store manager had received such a severe beating.

During cross-examination the claimant stated that he was unaware of the respondent's disciplinary procedures as it was contained in the "Terms and Conditions" which he only received during January 2008. The claimant reiterated that he did not appeal the decision to dismiss him, as he did not know whom he could appeal to.

Answering questions from the Tribunal the claimant stated that the store manager was his manager for over one year. There was a dispute between them concerning the claimant's girlfriend. Other incidents had occurred between them outside working hours. The claimant provided a specific example where the store manager had thrown bottles at him. There were other incidents outside work hours where the store manager threw bottles at the claimant. There was tension between them on a daily basis and the claimant had raised the matter with Manager M who told him to stay out of the store manager's way.

**Determination:**

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal noted that company did not have a written appeals procedure.

The Tribunal by majority decision (Mr. Michael Forde dissenting) find that the claimant was unfairly dismissed but find that the claimant contributed to his dismissal as he had previously received warnings in June 2007. The Tribunal by majority decision award the claimant €2,500.00 under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal by majority award the claimant €960.00 which is equivalent to two weeks gross pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)

