

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD730/2007

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary

Members: Mr. J. Browne
Mr. S. O'Donnell

heard this appeal at Wexford on 7th July 2008

Representation:

Claimant:
XXXX

Respondent:
The Company Secretary

The determination of the Tribunal was as follows:

The claimant was employed from April 2005, when he was fifteen years of age, as a cashier. He worked at weekends for some ten hours per week. The employment was uneventful until April 2007.

The respondent's position is that at that time the proprietor noticed that the claimant's quality of work deteriorated and he was unwilling to accept verbal instructions. The respondent's position was further that on 21st April 2007 the claimant was late for work and provided no explanation for this when challenged and failed to complete tasks given to him such that a verbal warning was given to the claimant by the proprietor. The claimant's position is that he did complete all tasks allocated to him that day.

The respondent's position is that the claimant received a second verbal warning on 27th April 2007 and that this warning was as a result of the claimant talking to his friends near the rear entrance of the premises during his break-time an occurrence the claimant had been told about on previous occasions. The claimant's position is that 27th April was the first time this matter had been mentioned and he was not given a verbal warning.

The respondent's position is that sometime in May 2007 the manager gave a verbal warning to the claimant for being absent from his workstation. The claimant's position is that he was carrying out one of his allocated duties of ensuring there were adequate stocks of coal and gas cylinders for sale at the front of the shop. The respondent's position was that further verbal warnings were issued on both 12th May and 16th May 2007 for poor time keeping and too many smoke breaks respectively. The claimant's position is that he only received a verbal warning on one occasion and this was when he was five minutes late for work.

The respondent's position is that on 15th June 2007 the claimant received a verbal warning, described as a final verbal warning for unsatisfactory work behaviour by the proprietor, who could not recall if he had used the word final to describe it to the claimant. The claimant could not recall receiving this warning.

On 29th June 2007 the claimant cashed a third party cheque despite having been instructed by the proprietor not to do so. This matter was raised with the claimant on 30th June 2007. The claimant's contract of employment states that accepting third party cheques without management authorisation constitutes gross misconduct. The proprietor and the manager met and discussed the incident and on 6th July at the end of the claimant's shift at 9-50pm the manager dismissed the claimant.

Determination:

The Tribunal, having carefully considered the evidence given by the parties in this case, notes that the claimant was employed when he was fifteen years of age and that he worked from ten to twenty-five hours per week both during school holidays and term-time whilst in full time education. The Tribunal also notes that most of the claimant's working days were Saturdays and Sundays and that the respondent had given the claimant a contract of employment that the claimant had signed whilst a minor. Disciplinary procedures were laid down in this contract. Nonetheless the claimant had been spoken to over the last three months of his employment but had not been warned of the consequences of his failures in the performance of his duties. The respondent failed to give the claimant the warnings required by the disciplinary procedure. When the decision was made to dismiss the claimant for alleged gross misconduct the respondent waited some days and indeed waited for some four hours into his shift before communicating this decision to the claimant. Gross misconduct entitles an employer to dismiss summarily an employee who they deem to have grossly misconducted themselves. In these circumstances the Tribunal determines that the claimant was unfairly dismissed and deems that the most appropriate remedy in this case is compensation, which accords with the preference of both parties. The Tribunal determines that the amount of compensation under the Unfair Dismissals Acts, 1977 to 2001 should be in the sum of €2,000-00

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)