

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

UD1121/2007

Against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr F. Cunneen  
Mr G. Lamon

heard this claim at Dublin on 11th April 2008  
and 3rd July 2008  
and 4th July 2008

Representation:

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Claimant(s): Ms. Oisín Quinn BL instructed by Mr. David Montgomery, Thomas Montgomery & Son, Solicitors, 5 Anglesea Buildings, Upper Georges Street, Dun Laoghaire, Co. Dublin

Respondent(s): Ms. Cathy Maguire BL and Mr. Alex White BL instructed by O'Donnell Sweeney Eversheds, One Earlsfort Centre, Earlsfort Terrace, Dublin 2

The determination of the Tribunal was as follows:-

### **Background**

Counsel for the claimant outlined to the Tribunal that the claimant commenced employment with the respondent in 1973 and along with two other employees was employed in Munster. In thirty-five years the respondent did not encounter any problems with the claimant. The claimant and his two colleagues were rostered to work on call for a week, this was organised amongst them and there was always someone on call. In July there was a problem with claims for on call employees. The claimant attended a disciplinary hearing with his union representative. The claimant submitted an expense claim for this and two weeks later the claimant submitted the same claim. The claimant was never paid these expenses. The claimant was told that he was going to be

dismissed after thirty four and a half years.

Counsel for the respondent outlined to the Tribunal that the claimant's difficulties arose with the respondent in January 2007 in relation to irregularities in the claimant's expense sheets. A disciplinary meeting took place. The respondent gave the claimant the benefit of the doubt. The claimant was issued a warning for twelve months. An irregularity occurred in March to April 2007 when the claimant double claimed a call out allowance and other expenses. The head of operations (PT) listened to the claimant's explanation and he believed that this amounted to gross misconduct

On the previous occasion the respondent was of the view that it was a genuine error but did not take the view the second time it happened. The claimant was dismissed and he appealed the dismissal to the MD who upheld the dismissal. The claimant was represented by his union representative. The claimant received double pay for a call out and he offered to pay the money back.

### **Respondent's Case**

The head of operations (PT) for the respondent told the Tribunal that he was responsible for all aspects of service delivery to customers. The claimant reported to a line manager and the line manager reported to the PT. PT was two levels above the claimant. PT was appointed to this role on 12th February 2007. The line manager was unwell and he was directly responsible for the claimant. PT was then a proactive line manager and received assistance from other managers. He received claim forms to sign by e-mail without a signature and as the new person appointed to the job he wanted to establish good practice. He requested that claim forms be signed. In a claim form, which the claimant furnished, he discovered there was a gap between 20th March and 17th April. The forms were in respect of overtime and for an allowance and related to a date in March. He did not check it off against a claim form. He had no difficulty with the claimant claiming expenses. Staff were encouraged to submit claims promptly. He had a difficulty with the claimant's time sheets in July 2007. The head of HR gave him the claimant's claim forms as there appeared to be an instance of duplication. He examined the claim forms and he found instances of doubling up. On a call out claim for March there was more than one claim for the same period. He determined that this merited an investigation. He looked at company procedures and noted that different managers signed the claim forms. It was not usual for him to receive two claims for the same period. When he examined the documents he noted that two were the same.

He decided to have an investigative meeting with the claimant. He wrote to the claimant on 1st August advising him that a meeting that was originally planned for the 24th July was rescheduled for 23rd August 2007. The claimant was unable to attend on 24th July due to illness. Present at the meeting was PT, the line manager, and the HR manager. The claimant was represented by JC a colleague who was also a shop steward. This was an investigative meeting and the purpose of the meeting was to establish if the facts before them were correct. PT chaired the meeting and the claimant's representative was able to comment at will. At the meeting the claimant admitted that he had submitted the claims and he offered to pay any money outstanding. He was careful to make it clear to the claimant that this was an investigative meeting. The claimant did not say that he submitted a duplicate form. The claimant talked through the process of completing the claim form and he stated that he was not familiar with a spreadsheet. He read out a portion of the letter dated 6<sup>th</sup> February 2007 addressed to the claimant in which he outlined his concerns at the disciplinary meeting, which was held on 31st January 2007. He stated that in the event that a letter of appeal was not received from him by 13th February, that the disciplinary decision would be implemented and a verbal warning would be effective from that date. He told him that all claims submitted by him in future were to be

accurate. He wrote to the claimant following the investigative meeting on 28th August regarding expenses and on-call allowance. In this letter it was outlined to the claimant that the respondent was not happy with the explanation offered by the claimant at the investigation meeting. He was required to attend for a disciplinary meeting on 31st August. PT chaired the meeting and he explained that this was a disciplinary meeting.

He had talked through the facts at the investigation and disciplinary meeting and confirmed that eight call outs were claimed but only six were undertaken. During these meetings there were never any allegations that the duplicate claims /expenses had been paid. PT confirmed that the duplicate expense claims were not paid, but the callouts were.

Under cross-examination he confirmed that the claimant was one of thirty technicians and he was based in the Munster area with two others. Callouts were claimed on timesheets on a monthly basis, and expenses on a weekly basis. The month ran from 17<sup>th</sup> to the 16<sup>th</sup> of the following month. The claimant had moved from being paid on a weekly basis to a monthly basis in January 2007. Training was made available to all staff for completing these timesheets but he did not know if the claimant had availed of it. The role of the customer support manager was to check the form, approve it, sign and send it to payroll, he was not aware if payroll also checked them.

He was taken by the warning issued to the claimant in February 2007 and this was a plank of his decision making during the course of the disciplinary hearings. He could not agree that the claimant's actions, which led to this warning being issued, were not done deliberately in the context of the letter issued. He was satisfied that the claimant had claimed for eight callouts not six and this amounted to fraud.

Payslips were introduced in to evidence and Counsel for the claimant went through them. In period 51 of 2005 there was payment for three callouts, in the monthly payslips for January and February 2007 no callouts were paid, the March payslip showed two callouts. It was pointed out that it appeared that the timesheet on which they were paid that there was no approver signature, the PT confirmed he had not asked the customer support manager why this was.

The customer support manager signed the claimant's timesheet for April 2007 on the 18<sup>th</sup> April and he signed the May 2007 timesheet the following day. The May timesheet included a duplicate callout claim from the April timesheet. He did not ask the customer support manager about this. It was put to him that the claimant's April timesheet was approved on the 18<sup>th</sup> April but the claimant did not receive payment for over a month. He explained that the timesheets take about a week to process, employees are paid on the 26<sup>th</sup>, so if they are submitted late they will be paid in the next pay period.

At the investigation meeting on the 23<sup>rd</sup> August 2007, the first issue dealt with were the timesheets and then the expenses. Counsel for the claimant said that the union representative raised the issue that employees did not know when they were paid expenses at this meeting, he thought that expenses were shown on the payslips but could not identify which claims were paid.

He initiated a disciplinary meeting after discussing it with the customer support manager, as he felt that at the investigation meeting he had not heard anything to explain the duplicate claims. This disciplinary meeting took place on the 31<sup>st</sup> August 2007, in attendance were the witness, the customer support manager, HR manager, the claimant, his shop steward and his union representative attended it. He explained that the union representative did most of the talking at this meeting, he put forward the argument that the claimant was not good at excel and had made

mistakes copying and pasting. PT reiterated that the claimant had a duty of care to ensure that the forms submitted were correct especially after receiving a serious warning.

At this meeting the claimant said he did not regularly receive payslips, Counsel for the claimant asked him if he had the view that the claimant would have known he was paid for expenses before the duplicate claims were submitted, he said it was not a major factor in his decision.

It was confirmed by the respondent after a break in the procedures, that expenses did not appear on payslips, but employees were notified of payment by electronic mail.

In his letter of the 11<sup>th</sup> September 2007 informing the claimant of his decision resulting from the disciplinary hearing he wrote that he found it unlikely that the claimant did not notice that he had been paid €819.98 in excess of his entitlement between March and May, it was put to him that when the claimant submitted his claim on May the 15<sup>th</sup> he would not have known if he had been paid as he was only in receipt of three callouts payments for the year but had worked six. PT said he gave little weight to this as the claimant had completed claims and expected to be paid.

At the disciplinary meeting the claimant and the union representative put forward the case in relation to the duplicate expenses forms, that the claimant did not remember sending the first one and that day he had to call to Cork so when the claimant noticed the Cork call was not included on this form he had thought he had not submitted it and sent it. He did consider this explanation carefully but could not accept it.

He took the decision to dismiss the claimant. The procedures of the company were referred to and it stated that the managing director may only dismiss an employee. He explained that he had taken advice from the HR manager who had told him he was within his rights to dismiss the claimant. The agreement was an old one and did not apply to their company.

He had attended the appeal meeting but the union representative had objected to his presence and he had left. He had not discussed why he had arrived at his decision with the managing director before this meeting took place. He had met with the managing director afterwards on an individual basis who questioned him; he was comfortable with the procedure after having been an appeal officer himself.

The respondents group HR director gave evidence that up until April 2008 she was the HR manager in Ireland. Part of her duties included overseeing any disciplinary procedures and the maintenance of agreements with unions. In January 2007 she was head of HR and was fully aware of the incident. It was brought to her attention first that the claimant had made a double claim. Aware that the company had a previous issue with the claimant she went through other claims pertaining to the claimant and found other anomalies and asked PT to investigate.

She attended the disciplinary meeting held on the 31st August 2007. She explained that the claimant's line manager went through line-by-line of all the companies concerns so that the claimant had the opportunity to answer. At this meeting the claimant had offered to pay any money to the company that had been overpaid to him. Also at this meeting an argument was put forward in support of the claimant that he was not good at computers, she said that the claimant had a level of proficiency above basic, he sent emails and had his own computer.

She outlined that expenses were paid on a weekly basis through a bank account and employees were advised of payment by a remittance advice sent by email. The financial controller had

developed the forms on excel, which were simple to complete. In relation to the training available at the changeover to these new forms, training was offered to all and a person from finance was made available if anyone requested assistance.

She explained that her expectation of the forms approver was to validate that the person claiming did the work they were claiming for and that it was not the role of the approver to cross check claims. The claimant produced his diary at the disciplinary meeting to try and explain his record of call outs. She did not know at the time of the investigation whether the claimant had been paid for duplicate claims, and stated that payment was not the issue and it was the duplication of claims.

She advised PT and the line manager before the investigation and disciplinary process to ensure that they were aware of their obligations to the claimant and the procedures to follow. In relation to the claimant's appeal she discussed this with the managing director who carried this process out. She advised him not to discuss the matter with the individuals involved.

The terms of employment of the claimant were referred specifically in relation to the authorisation of PT to dismiss the claimant. The HR manager explained that PT made the decision but the claimant was aware of the appeal process, also if no appeal had been made the claimant would have been dismissed by a separate letter.

Under cross-examination she reiterated that her concern was that the employee had submitted duplicate claims and that the point of payment was not one made at the disciplinary meeting. There were no written procedures in place in relation to the approval of claim forms. The onus was on the claimant to ensure forms were correct, and an element of trust was placed with their employees in completing these. The contents of PT's letter "re outcome of disciplinary meeting" in which he states that it was unlikely that the claimant did not notice he was paid €819.98 in excess of his entitlement between March and May was put to her, she said it was incumbent on the employee who receives extra to notify the company.

The HR manager said they did not know if the claimant had been paid for his expenses before 13th June 2006.

The customer support manager who was the claimant's line manager gave evidence on behalf of the respondent. He joined the company in 1997 and progressed to customer support manager. He was involved in the disciplinary hearing in relation to the claimant in February 2007. He recalled that firstly the claimant had submitted an overtime claim for travelling and the company's position that the claimant was due time in lieu for travel. Secondly that the claimant claimed overtime for one day but the overtime had not been worked on that day. A verbal warning issued to the claimant as a result of this process. His role in this process was mainly investigatory and that he had attended all meetings in relation to this.

The claimant had reported to him since early 2006. In 2006 changes were negotiated with the union regarding pay. The payroll changed from weekly to monthly, all taxable claims including callouts were changed to monthly and non-taxable expenses were paid weekly into bank accounts. All claims had been previously written up manually and were now computerised. The new forms were not difficult to complete and he was not aware of the claimant or other employees raising issues regarding the completion of these forms.

He attended the investigation meeting of the 23rd August 2007 and follow on disciplinary meeting, his role was to take notes and establish facts. The issue of payment of duplicate claims did not arise

at these meetings. During this meeting the issue of duplicate claims for callouts was raised with the claimant who said they were mistakes he could have copied and pasted them in error and in relation to the duplicate callout for Cork area he explained that it was a mistake in respect of the month end.

His role in approving forms was to generally look through them, ensure there were no obvious errors, the callout dates he was familiar with and to check distances re overnights. He would not check back on former claims to ensure that double claims had been made. He explained that on a weekly basis he could have twenty to twenty five expense forms to approve and on a monthly basis twenty-five or more timesheets plus weekly expenses forms. The level of trust placed on the employees to complete forms honestly was extremely high.

It was pointed out to him that he had approved a timesheet on the 18th May 2007 and another on the 19th May 2008 for the claimant that included one of the duplicate callout claims. He did not notice this when signing them and he reiterated that his role did not include crosschecking claims.

Under cross-examination he was asked to confirm the number of callouts the claimant undertook in 2007 and agreed with thirteen and concurrently agreed that the claimant had received payment for thirteen as per his payslips in 2007. It was put to him that the claimant would not have known that he did not check the previous forms submitted when approving forms; he agreed that he probably did not.

The HR manager had given him copies of the expense and claim forms in question and he used only these in the course of the investigation and at no stage checked to see if the claimant had received payment.

The managing director the company in Ireland since 2004 gave evidence on behalf of the respondent. The company has sixty-six employees in Ireland. He conducted the appeal as a result of the claimant's disciplinary hearing.

He outlined the disciplinary appeal meeting, which took place on the 26th September 2007. Originally the meeting commenced with himself, the operation manager, line manager, HR manager, claimant, union representative and a work colleague of the claimant. The union representative voiced concerns over the presence of both the operation manager and line manger, the managing director stood these two individuals down and the meeting recommenced.

The union representative did most of the talking on behalf of the claimant and the HR manager took notes. The union representative brought him through most of the issues and the claimant at the end of the meeting said it was a mistake.

The disciplinary letter of the 6th February was raised by the union representative that the claimant had been unhappy with the result of this disciplinary process but had not appealed at the time. The union representative told him that the claimant was confused with the timesheets. The managing director said the claimant had not raised any difficulties with the new system prior to the disciplinary procedures. The explanation of copying and pasting was put forward but he said he expected all his employees to have a reasonable good level of computer skills. The claimant was paid for each of the eight callouts but only six should have been claimed. The issue of when the claimant got paid was not an issue that mattered to him.

The call out in January had been paid in December, he reiterated that payments were not the issue

but the duplicate claims were. They went through the claimant's diary where he had noted his callouts, he found this confusing. After the appeal meeting he met with the operations manager and customer support manager and questioned them separately. After the appeal meetings he formed the view that the original decision of PT was correct and that the claimant should be dismissed for gross misconduct.

The dismissal letter of the 10th October 2007 was read in to evidence. He did not accept the claimants defence of it all being a mistake was valid. He did consider other forms of penalties and took his time over the decision he made, but it was his view that the actions of the claimant were deliberate.

Under cross-examination the disciplinary procedure within the union agreement was referred to. The managing director was asked which clause of this agreement that the claimant was dismissed under; he explained that it was the HR manager's role to advise him and to ensure that these procedures were followed. He was not sure which clause that the claimant had been dismissed under, but he thought he was the only person who could dismiss an employee. He explained that PT had very briefly gone through the issues with him before the appeal hearing. He did not believe if he had overturned the original decision of PT that this would undermine PT. It was not important at the time to find out whether the claimant had been paid or not for duplicate claims.

In response to questions from the Tribunal he confirmed that no one had looked into the issue of payment. He had gone through all the documentation at the appeal meeting and the process had been fair. He did not question PT or the customer support manger in relation to their mistake of approving the timesheets and expenses form and explained that they trusted their employees to complete these correctly. He assumed after the previous verbal warning the claimant would have been careful in completing these forms. The gross misconduct in this case was deliberately falsifying documents, but gross misconduct was not defined in the agreement. He felt that the investigation was full and thorough. He reiterated that the making of these claims were important not the actual payment of them. The company had given the claimant the benefit of the doubt in February when they had issued him with a verbal warning.

Next to give evidence was an employee of the HR department, she explained that when expenses were paid that a remittance advice slip issued from the UK electronically. There were issues with this system as employees did not consistently receive these notices but this has been resolved. She confirmed that the claimant had been paid in advance for his January 2007 callout in December 2006.

### **Claimant's Case**

The claimant gave evidence that he commenced employment with the respondent in 1973 as a field service engineer and is based in Cork. In 2006 the company introduced a new system for claiming on call outs and expenses. The employees were given a choice as to when to start using this system, the claimant opted to start in January 2007. Up until the 2nd week in January 2007 the claimant was using the old docket book.

He explained that maybe once a month he would be in the office and would log in to his email. He was aware that a person would be available in Dublin to explain and give training on the new claim system if needed. He came to understand the new system through a colleague who emailed the spreadsheets to be used, and if he had any problems using the system he telephoned this colleague.

In respect of the disciplinary meeting in January 2007, which resulted in the claimant receiving a verbal warning, he was not happy with this outcome. This related to claiming overtime for the wrong date and the wrong rate for travelling to a training course. He explained that if he was working for the same customer and overtime occurred over two days he would claim it all on one day. He believed then and now that he was entitled to the travel at the rate he had claimed for. He agreed that the company accepted that he had not made these claims maliciously

The timesheet for February 2007 was the first claim he had completed using the new system, this included two callouts and was emailed on the 15th March 2007. The next sheet related to March 2007 which included one callout for the period of "28 7/2/07 to 6/3/07". The claimant thought that he had used the February sheet as a template and when he opened it up he had deleted a number of entries, he could not remember filling in this form.

The April sheet had three callouts, one of which had been claimed on the March sheet. The claimant could not understand how he had made this mistake. The May sheet had a duplicate callout that he had had previously claimed in April. He did not know how he made this mistake; he thought maybe an explanation was that as this duplicate callout overlapped the month as the months ended on the 17th. He also had copied and pasted a number of entries. At the disciplinary meeting he was asked how he kept his records, he produced his diary, when completing these claims he would look at his diary and then fill in the sheets according to this.

The claimant submitted an expense claim form on the 29th May 2007 and then resubmitted the same expense claim with an additional entry for the 29th May 2007 on the 15th June 2007. He had completed his expense form on the 29th May 2007 and posted them, after this he had received a call to go to Cork Airport. Then when he went to complete time sheets he noticed he had not included Cork Airport so he thought he had not completed the time sheet for this period, so he added Cork and printed it. He brought this expenses claim form along with three others to Dublin to get signed.

In Dublin he met PT for the first time, and PT asked him to sign the expense forms.

He said he had not claimed for the duplicate callouts or expense claims deliberately.

He received a letter from PT asking him to attend a meeting to investigate his expenses and on-call allowances on the 24th July 2007. As he was out sick at the time this meeting was postponed until the 23rd August 2007. He attended this meeting with his shop steward. At this meeting he was asked to explain his duplicate claims.

As a result of this meeting he received a letter dated 28th August 2007 informing him to attend a disciplinary meeting on the 31st August 2007. His union representative and his shop steward attended this meeting with him. The note of this meeting was produced in evidence and the claimant agreed with its contents as to what had been said.

He received a letter on the 11th September 2007 from PT that detailed the issues arising from his duplicate claims, and also referred back to the verbal warning he received in February 2007. The decision arising out of the disciplinary meeting was he should be dismissed from employment summarily. This letter outlined that he was entitled to appeal this decision; he appealed this decision to the Managing Director. He felt he had not had a fair hearing at his first disciplinary meeting that it was a genuine mistake that he had made.



The disciplinary appeal meeting took place on the 26th September 2007, this was the second occasion he had met the managing director during the course of his employment. His union representative and his shop steward accompanied him. On the 10th October 2007 he received a letter from the managing director outlining this appeal meeting, and summarily dismissing him from employment.

He established loss for the Tribunal.

During cross-examination the claimant was shown documentation that he had made an expense claim in June 2006 on the new system. The claimant said he was not proficient at excel, he may have complicated the forms by filling in dates where they were not needed and reiterated that it was a mistake. He was not offered training in completing the timesheets and expenses forms, the email of the 19th June regarding training was put to him, he said he might not have opened the email. He accepted that he could complete the expense forms but the callout system was different and training should have been given for this.

He had received the verbal warning in February 2007 for submitting false claims and he still believes that they were not false claims. He did not appeal this verbal warning on advice from his union representative knowing that this warning would remain on file for twelve months.

In relation to his timesheet for April 2007 he explained he must have copied and pasted from his March time sheet and cleaned out dates but the duplicate claim for the call out for 28th February – 6th March remained. He could not recall why he had changed Cork to Munster on this timesheet in April 2007.

He did not cross out the callout entries in his diary when he claimed for them. He accepted that his inability to give the company an explanation for his duplications of callout claims was a problem for the company.

He would have to accept that he was paid for the callout in early January in December as per payroll employee's evidence.

It did not occur to him that he had already signed and submitted the first expense sheet on 29th May 2007 when he resubmitted this form with an additional entry on the 15th June 2007. He was not attempting to claim twice, it was human error and a genuine mistake.

He said he did not check his monthly bank statements, so he would not have noticed if he was overpaid. He presumed that the payroll department would detect duplicate claims; he accepted that it was his role to make sure that claims were correct.

The company was justified in taking action as he was at fault, but he thought the results of this action were very harsh. He agreed that during the course of the investigation and the disciplinary hearings he was never accused

The shop steward gave evidence on behalf of the claimant. He has been employed with the respondent for thirty –six years. He explained that before the changeover all expenses paid would appear on their payslips. Afterwards, when expenses were being paid, employees would be notified by email. Sporadic notification of payments in 2007 was an ongoing problem. He confirmed that at the investigation and disciplinary meetings the issue of whether the claimant had been paid for

the duplicate claims never arose.

Under cross-examination he said the issue of notification of payment of expenses was raised with the company at different times, it was a rolling concern. He had no complaint at how the investigation and disciplinary meetings were conducted; all issues raised at these were given a full airing.

The claimant's union representative gave evidence. He is a full time union official and was involved in negotiating the union agreement with the company and accompanied the claimant to meetings. He attended the disciplinary meeting in January 2007 with the claimant, which resulted in the verbal warning. At this meeting the company and the union held a different view on the overtime that the claimant had claimed for travelling to and from a training course. The issue had not been raised with him since. Employees now accept time in lieu.

He did not appear on behalf of the claimant at the investigation meeting of 23rd August 2007, but did represent him at the subsequent disciplinary meeting on 31st August 2007 and appeal hearing on 26th September 2007. In cross-examination he confirmed that the meetings he attended had been conducted fairly and that he had not been prevented from providing fair representation for the claimant.

### **Determination**

Based on the evidence that was adduced before the Tribunal we are satisfied that the claimant had an impeccable employee record up until the events in relation to the subject matter of this claim.

The Claimant however, contributed significantly to the termination of his own career, in failing to address either the discrepancies in his expenses when it was brought to his attention or to accept training in relation to record keeping. However, the Tribunal finds that the investigation carried out by the respondent in relation to the expense claim discrepancies was not as full and thorough as it should have been, taking into account the claimant's lengthy employment record and his uncharacteristic behaviour at the time.

In all of the circumstances the Tribunal finds that the claimant was unfairly dismissed and awards the claimant the sum of €5000.00 under the Unfair Dismissals Acts 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

