EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:	CASE NO.
Employee	UD217/2008

against the recommendation of the Rights Commissioner (R-049315-UD-07) in the case of:

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. M. Gilvarry

Members: Mr. B. O'Carroll
Mr. T. Kennelly

heard this appeal at Galway on 16 October 2008

Representation:

Appellant: Ms. Agnes O'Connor, Citizens Information Centre, Augustine Street, Galway

Respondent: Mr. Ronnie Lawless, IR/HR Executive, IBEC, Ross House, Victoria Place, Galway

The determination of the Tribunal was as follows: -

This case came before the Tribunal by way of an appeal by an employee against the recommendation of the Rights Commissioner (R-049315-UD-07) in his case against the respondent

Application for Leave to Represent
At the outset of the Hearing Ms. Agnes O'Connor, Citizens Information Centre, Augustine Street, Galway, applied for leave to represent the appellant. On hearing her application and her assertion of knowledge of Employment Law and procedure, the tribunal granted her application.

Preliminary Issues
At the start of the hearing there were applications made on two preliminary points by the respondent's representative. Firstly it was asserted that the appeal had been lodged with the Tribunal outside the period of six weeks provided for the lodgement of such appeal after the recommendation of the Rights Commissioner. Secondly it was asserted that the appellant had not

put the respondent on notice of the appeal as provided in the Unfair Dismissals Acts, 1977 to 2001.

The recommendation of the Rights Commissioner was signed on 5 September 2007. Section 9 (2) of the Unfair Dismissals Acts, 1977 to 2001 provides that: - "*An appeal shall be initiated under this section by a party by giving, within 6 weeks of the date on which the recommendation was given to the parties concerned, a notice in writing……."*

In this case the Tribunal received a facsimile giving such notice on 17 October 2007. Accordingly the Tribunal was satisfied that this notice of appeal was received within the afore-mentioned six-week period.

Section 9 (2) of the Unfair Dismissals Acts, 1977 to 2001 further provides that: - "*a copy of thenotice shall be given to the other party by the Tribunal as soon as may be after the receipt by it ofthe notice."*

As there is no requirement for the appellant to put the other party on notice of the appeal the Tribunal was satisfied that the appeal was properly before it and that there was jurisdiction to hear the appeal.

The Tribunal noted that the appellant's representative asserted during this preliminary application that the appellant should not be penalised for any ignorance on her behalf of correct procedure under the Unfair Dismissal Acts.

Substantive Appeal

The appellant was employed from May 2002 as a cleaner working at the site of a particular client of the respondent. During the spring of 2005 the appellant was transferred to the site of a different client of the respondent, which is involved in the pharmaceutical industry. The employment was uneventful until an incident on 24 July 2006 when the appellant, who as part of his duties had an "all doors" swipe card, allowed an employee (AE) of the respondent's client to leave the premises through a door that AE was not authorised to use. He left this door ajar until AE, who it appears had gone out to gain access to her car, returned through said door. These actions of the appellant came to the attention of the appellant's regional administrator (RA) on 25 July 2006 when RA received two reports of the incident, one from the client's security manager and a second from the regional manager of the client's facility manager. These reports make it clear that the appellant's actions constituted a breach of security, a dismissible offence if the appellant had been in the client's employ. The appellant was not permitted to return to the client's site and any further action against the appellant was a matter for the respondent.

RA met the appellant at 2-00pm on 25 July 2006 when the complaint, which has never been disputed by the appellant, was put to him. The appellant's position is that he was trying to help AE. RA then suspended the appellant pending further investigation into the incident. Following the investigation into the incident the appellant was called to a disciplinary meeting that took place on 28 July 2006. This meeting was attended by RA, the respondent's site manager and the claimant who attended without representation, which he had declined. The appellant accepted the facts as presented to him, again stating, "I was just trying to help the girl." It was put to the appellant that his action in opening the door constituted a serious breach of security as well as a serious breach of health and safety regulations. This amounted to gross misconduct.

After a recess during which RA consulted with the human resource manager (HR) the appellant

was dismissed for gross misconduct warranting dismissal. This dismissal was confirmed in a letter from HR also dated 28 July 2006. The appellant was given five days to appeal to a director of the respondent. No such appeal was lodged.

Determination

The respondent in this appeal was unable to show the Tribunal when or if the appellant had received copies of either the employee handbook, or the disciplinary and grievance procedure. It sought to rely on the assertion that the appellant had been made aware of the serious view taken by the client of breaches of it's security policy when the claimant received his all doors swipe card from the client. The appellant chose not to give evidence in pursuit of his appeal. In those circumstances the Tribunal has difficulty giving weight to the submissions by the appellant's representative that he was not properly furnished with the requisite policies and procedures. From the outset the appellant has never denied his actions. The Tribunal is satisfied that the appellant was aware of the serious view that would be, and indeed was, taken by both the client and the respondent of his actions in opening the door and allowing AE unauthorised egress and access to the client's facility. Considering the nature of the activities undertaken by the client the Tribunal is further satisfied that it was reasonable for the respondent to conclude that the appellant's actions amounted to gross misconduct justifying dismissal. For all those reasons the Tribunal is satisfied that the dismissal was not unfair and the appeal under the Unfair Dismissals Acts, 1977 to 2001 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)