

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

-claimant

CASE NO.

UD254/2008, MN235/2008

WT123/2008

Against

Employer

-respondent

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**

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

**ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S C

Members: Mr J. Browne  
Mr P. Trehy

heard this claim at Wexford on 14th November 26 and 27th January 2009

### **Representation:**

Claimant : Mr Liam Bell B L instructed by  
Ms. Aileen Fleming, Daniel Spring & Co., Solicitors, 50 Fitzwilliam Square, Dublin 2

Respondent : Mr. John Farrell, IBEC Confederation House, Waterford Business Park,  
Cork Road, Waterford

The determination of the Tribunal was as follows:

The appeal under the Organisation of Working Time Act, 1997 was withdrawn at the outset of this hearing. Dismissal was in dispute in this case.

### **Claimant's Case**

The claimant commenced employment with the respondent in early 1998. Following a year's absence on medical grounds he returned to work by the summer of 2007 and was allocated lighter duties. By that time a practice had developed whereby the claimant was allowed to take pallets away from the plant for his own benefit. While engaged in such activity at the end of his shift on 7 November 2007 a stainless steel light weight-pipe over two metres in length was discovered among the pallets. The witness felt the best option was to drive to the office of the transport manger with the pipe on a trailer and to deposit it there. On reaching that office the witness met the owner and

the materials manger. The owner was “kinna mad” with the claimant as he strongly suggested the witness was inappropriately removing that pipe from the premises. The witness denied this and referred to another colleague in support of his contention that he just happened upon that pipe.

The next morning the production manager notified him that he was to attend a meeting with the human resource manager about this issue and to bring a representative. The witness was aware that the unauthorised taking of product from the plant was a dismissible offence. The claimant felt that in the course of that meeting he was dismissed. He maintained that the human resource manager explicitly stated her non-acceptance of his version of events concerning the movements of that pipe. While denying he was agitated during that meeting he conceded that his shop steward had to restrain him on at least one occasion. The witness described the human resources’ manager behaviour as “a bit mad” and that his shop steward had to ask her to calm down as she was shouting at him. She indicated that there would only be one outcome to this situation and was not prepared to involve “an innocent man” when he referred to his colleague for confirmation of his version of events. That colleague was a Polish national who had commenced work at the respondent’s some time previously.

The witness felt there was no point in staying on at this meeting and therefore left the room and the respondent’s premises. He was not prepared to return to work due to his understanding that the respondent was accusing him of theft. He received his P45 about one week later.

A colleague who assisted the claimant load the pallets onto his trailer on 7 November outlined his involvement in this process. He was later questioned by the materials manager about the circumstances of that loading particularly on the issue of that pipe.

Three trade union officials gave evidence. The shop steward was approached by the claimant on the morning of 8 November in relation to a meeting arranged later that morning. In briefly outlining his situation the claimant commented he was in some difficulty over a pipe. While not knowing more details of the situation the witness expected the claimant would “get a wrap on his knuckles” from the respondent over this incident. The production manager opened the meeting saying he wanted “to get to the bottom” of this situation. The claimant offered an explanation for bringing the pipe to the transport office. The human resource manager aid she did not want to involve the other colleague. She also clearly expressed her disbelief at the claimant explanation. She replied in the affirmative when the witness asked her whether the claimant was being sacked. She indicated that the respondent had evidence to justify the claimant’s dismissal.

The witness acknowledged that the claimant, who was given an opportunity to explain his case, initially introduced the notion of dismissal into proceedings at this meeting. The claimant invited the two managers to sack him on more than one occasion and “walked out” prior to the conclusion of that meeting. It was the witness’s considered opinion however that the claimant had been dismissed during the course of that meeting.

The local branch secretary subsequently met the claimant and the shop steward and based on their versions the witness was satisfied that the claimant had been dismissed for alleged theft. He never saw nor sought a letter of dismissal. The witness in turn contacted the regional officer who also got involved in this case. That officer said that the claimant was very upset at the situation and had difficulty in explaining his situation to him. Following a meeting with the human resource manager the witness conviction that the claimant had been dismissed was confirmed and reinforced.

## **Respondent's Case**

The respondent is a medium sized and well-established company engaged in the production of steel for the pharmaceutical, construction, healthcare and food industries. Due to security concerns a fence was erected around its plant perimeter with the intention of keeping unwelcome visitors out and their stock in. The materials manager who was responsible for the physical products of the firm was aware that the claimant could remove used pallets from the premises for his own use. This witness and the managing director were standing outside the transport office in the late afternoon of 7 November 2007 when they observed the claimant drive up to that office with a trailer in tow and stop abruptly when he encountered them. The managing director saw a pipe sticking out of that van and when the claimant asked how much the respondent wanted for it he was told they the company does not operate that way. The claimant remarked that another worker, a Polish citizen, loaded that pipe onto the trailer. The witness felt that this pipe if discovered in the pallets could have been carried to the nearby stores and added it was inappropriate to take it to the transport office.

The witness told the claimant to leave the pipe on the premises and to report to the human resource manager the next day. He then contacted the claimant's colleague who denied loading that pipe as described by the claimant. The witness subsequently phoned the human resource manager and "briefed her on the situation". At other time during the exchanges with the claimant did he hear the managing director accuse the claimant of stealing. The witness was not asked nor did he participate in an investigation into this incident.

The human resource manager at the relevant time and the current managing director highlighted the respondent's major investment in security. All staff were aware that the unauthorised removal of company product was a dismissible offence. This was stated in the company handbook and the claimant had been issued with his terms and conditions of employment. During a walk around the premises on 7 November 2007 the witness had not seen a pipe among the pallets. That evening she received a phone call from the materials manager who gave "a small few details" of what transpired earlier at the transport office. Her suspicions were aroused when she heard the new overseas colleague being mentioned.

The following day the witness attended a meeting accompanied by the production manager, the claimant, and a shop steward. She described the purpose of this meeting as exploratory but added it could be a serious matter. When the production manager opened proceedings the claimant interjected and invited the witness to dismiss him. He repeated this offer up to eight times and had to be restrained by his shop steward. The human resource manager who had some training in that field, described the ongoing meeting as heated especially when the claimant referred to the overseas colleague in what she felt were derogatory terms. The production manager and herself "got a bit agitated" at the labelling used by the claimant to describe that employee. During the course of that meeting the witness indicated that she did not need to speak to that person in relation to the pipe incident.

The witness did not think that the shop steward asked her whether the claimant was sacked. She never told him or the claimant that this was the case but did indicate to them that the truth was not being told about this incident. That meeting never formally ended due to the claimant's abrupt departure from it. He not only left the office but also vacated the premises that morning without explanation. The witness stated that no decision had been reached either prior to, during or at the conclusion of this meeting. However, she regarded the claimant's withdrawal from the meeting as amounting to the abandonment of his employment.

As a result of that development the respondent never “got to the bottom” of the pipe incident. At that time the claimant had not been accused of anything so therefore he had no need to “clear his name”. Since the claimant did not return to work following that meeting the witness instructed the administrative staff to issue his P45 to him. That document was posted to him on 14 November. The witness commented that the respondent did not want to “get rid of him” nor offer him redundancy. No solution was found to this situation in subsequent meetings with trade union officials. Those officials were not satisfied they had got the full and correct account of this incident from the claimant.

The company’s production manager gave evidence that he approached the claimant on the morning of 8 November 2007 and informed him of a meeting to be held later that morning. When he told the claimant there was an issue that needed addressing the claimant’s response was to challenge the respondent to dismiss him. According to the witness this meeting wanted to hear the claimant’s “side of the story”. The claimant got agitated at the outset of that meeting and remained in that state throughout. He explained he did not put the pipe on the trailer and referred to the actions of his colleague. The witness felt the claimant was using that colleague as “a soft target “ and in common with the human resource manager he was irritated at the way the claimant labelled that colleague. It was the witness’s impression that the claimant was shifting blame for the pipe onto that other employee.

Following the claimant’s explanation the witness accepted that the human resource manager used words and expressions of disbelief at his version of events. However it was his opinion that this manager gave everyone “ a fair crack of the whip”. The witness also formed the opinion that claimant’s account of the incident “didn’t stack up”. It possible the witness could have told the claimant there would be only one outcome if theft on his part were proved. However, he had no recall of the shop steward asking whether the claimant was now dismissed but did confirm that the meeting became heated.

The meeting effectively ended when the claimant left with the words “sack me if you like”. While still in the office the remaining three participants viewed the claimant vacate the premises. There was a sense that the full account of events surrounding the pipe incident had not been revealed. He said that the shop steward also commented that he did not get the full truth of this incident. The witness stated that the claimant was not dismissed at that meeting.

## **Determination**

Having heard the evidence the Tribunal was faced with a fundamental question as to whether a dismissal took place in this case. The conduct, context and comments made at the meeting of 8 November and its aftermath was crucial in that regard. The Tribunal notes that three of the four participants at that meeting became quite excited and emotional and as a consequence their recollection of the meeting may have become clouded. The Tribunal was impressed by the evidence of the shop steward, who was the only one to remain calm at the meeting. We accept the shop steward’s evidence It was his clear impression that while the claimant was less than open into his involvement in the pipe incident he was nonetheless, albeit obliquely, dismissed at that meeting. The Tribunal finds that the claimant was dismissed.

However there is no doubt that the claimant invited the respondent to dismiss him on several occasions. That attitude together with his general behaviour in relation to this case contributed significantly to this dismissal.

In assessing compensation the Tribunal is required, under the Act, to have regard to the extent to which the claimant contributed to the dismissal. His repeated invitation to “sack me if you wish” was undoubtedly a major factor. Under the Act compensation is to be “just and equitable having regard to all the circumstances” and we are of the view that only a nominal award would be “just and equitable”. Compensation will therefore be limited to four weeks pay.

The Tribunal awards the claimant €1792.72 under the Unfair Dismissal Acts, 1977 to 2001.

The claimant is awarded €1792.72 as compensation for four weeks notice under the Minimum Notice and Terms of Employment Acts, 1973 to 1977

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

