

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD8/2009

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. D. Winston
Ms. E. Brezina

heard this appeal at Portlaoise on 24 June 2009

Representation:

Claimant: In person

Respondent:
Mr. Michael O'Connor, D.J. O'Malley & Co. Solicitors,
9 Glentworth Street, Limerick

The determination of the Tribunal was as follows:

The respondent is a wholesaler of tobacco products and the claimant was employed from 1 March 2005 as a part-time sales agent. This involved the claimant securing orders from existing clients as well as finding new customers for the respondent. The claimant had responsibility for 33 clients 3 of which had cigarette vending machines. On 24 June 2008 the claimant inadvertently left his key for the vending machine at one of the three customers at that customer's shop, which is located some ten miles from the claimant's home. When the claimant became aware of his error, on 3 July 2008, he telephoned the owner of the shop, which stays open until around 9-00pm, at around 5-00pm to be told that the key had been found and was locked away in the customer's safe. Arrangements were made for the claimant to collect the key on 5 July 2008, the day the claimant and his wife were going away on holiday, as the shop owner was unavailable on 4 July 2008. The claimant forgot to collect the key on 5 July 2008. After the claimant returned from holiday the managing director (MD) of the respondent telephoned the claimant on 19 July 2008 and told him that while he was away on holiday the shop owner had used the key to empty the vending machine and had sold the stock over the counter. MD then proceeded to dismiss the claimant during this telephone call. The claimant later visited the shop to be told by the owner that an unnamed person in the respondent company had agreed to the shop owner's request to open the vending machine and sell the stock over the counter.

Determination:

This was a case where the respondent chose not to offer as witnesses any of those persons to whom the claimant referred in his evidence, namely MD and his co-director. The only witness proffered by the respondent was their accountant who had never met the claimant until the day of this hearing. In these circumstances the Tribunal must find that the claimant was dismissed without any, or fair procedure and it follows automatically that the dismissal was unfair. When considering the award to make in this case the Tribunal finds that the claimant contributed to his dismissal to a considerable degree. When the error was realised on 3 July 2008 any reasonable person would have gone to collect the key that evening before the shop closed. For these reasons the Tribunal measures the award under the Unfair Dismissals Acts, 1977 to 2007 at €2,000-00

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)