EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF: CASE NO.

EMPLOYEE **-claimant** UD621/2007

against

EMPLOYER **-respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony B.L.

Members: Mr J. Hennessy
Mr D. McEvoy

heard this claim at Waterford on 1st July 2008
and 7th November 2008
and 20th January 2009
and 21st January 2009

Representation:

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Claimant :
Mr. David Lane, SIPTU, Connolly Hall, Summer Hill,
Waterford

Respondent :
Neil J. Breheny & Co., Solicitors, 4 Canada Street,
Waterford

The determination of the Tribunal was as follows:-

The respondent is a network of women's groups that deal with marginalized women. Its objective is

to empower women of low educational attainment and those suffering long term unemployment, poverty and racism. To this end the respondent co-ordinates various projects. One such was theproject for Participatory Democracy and Gender Mainstreaming. The claimant was employed on afixed term contract from 6 March 2006 to 31 March 2007 as co-ordinator of this project. Its specificobjective was the politicisation of the women to enable them to go into decision-makingorganisations such as local government and local development programmes and challenge andinfluence decisions that would affect their lives. The project involved inter alia research, trainingand the formulation and compilation of a training pack and workshop material to be used byparticipants, when they completed the course, in their delivery of gender and equality training. Theproject was to be completed by 31 March 2007. At the relevant time the respondent had only twoemployees, one of whom was the claimant and the other was the assistant co-ordinator (ACO). Thedirectors of the respondent are volunteers. (Hereinafter, directors are identified by the initials DVand the third letter will distinguish the directors form one another). DVD was the claimant's linemanager. The project received funding under the Equality for Women Measure and this fund wasadministered by Pobal. FAS funded the training element of the project. This was the respondent'sfirst project with Pobal. The directors had a long history in the voluntary sector and a reputation tomaintain.

Things started off well. The directors had faith and trust in the claimant and were hopeful for the project. However as time went the directors became concerned on a number of fronts. DVD had difficulty getting the necessary documentation (cheques, stubs, bank statements and invoices) from the claimant, who had charge of the Pobal cheque book, when she was preparing the quarterly returns for Pobal for the draw down of funds and as a result deadlines were missed on a number ofoccasions including the December 2006. Initially, DVD believed this was because the claimant was busy. When DVD eventually got the invoices she was concerned to discover that the claimanthad made the social care payments to the participants on the social care course rather than to theirchildminders. This was contrary to the Pobal guidelines and could have implications for the participants' social welfare benefits. While the claimant denied that she had charge of the Pobal cheque book the respondent produced a number of e-mails sent in October to support its claim thatshe did. It was the claimant's evidence that DVD had told her that the delay in the drawdown offunds had been due to difficulties between Pobal personnel.

Around December 2006 the respondent discovered that the claimant had employed one of the course trainees to work in her home as a domestic cleaner. The project was about the support and empowerment of marginalized women and employing a participant as a cleaner introduced a dynamic that was wholly contrary to the ethos of the respondent organisation. The respondent wasalso concerned about the legal status of the work relationship and the implications that the work could have for the trainees's social welfare benefit: trainees can work 20 hours per week withoutaffecting their social welfare payments but as the course was 20 hours per week the extra two hourstook her over the allowed number of hours. It did not matter that the work was for only two hoursper week. DVG believed that there was an onus on the co-ordinator not to take advantage of atrainee who would not understand the dynamics of the situation. The claimant had twice denied toDVD that her cleaner was a trainee. It was the claimant's case that she saw no problem in havingthe trainee working as a cleaner in her home. She had only employed her for two hours per weekfor around three months. She put an end to the arrangement when DVD spoke to her about it. Itwas the trainee's evidence that she did not feel exploited and that the situation came about becauseshe had offered to do the work for the claimant. Her earnings from the claimant did not take herover the limit where her earnings would be affected.

On 13 February while at a meeting in a parish centre DVR received a call on her mobile phone from the claimant, who was somewhat animated, indicating that a revolt was taking place among the participants because of the non-payment of the childcare allowance. The claimant had made this phone call in the presence of participants and the administrator. DVD discovered that there were no birth certificates on file and she did not have any invoices. When she got the invoices from the claimant DVD immediately made the payments, some of which were to the crèche and while some were to the participants, which was contrary to the guidelines, DVD none the less paid them to calm the situation and not to be seen as withholding payments from disadvantaged women. This was the last straw for the respondent. The directors felt that the claimant was currying favour with the women and that the whole situation was out of control. On the following day, 14 February the respondent suspended the claimant on full pay pending an investigation. Other problems were uncovered during the investigation. Records provided to the Tribunal showed that the childcare payments were outstanding for only one week and the money had been in the account at that stage but because of the delay in invoicing payments could not be advanced.

It was the claimant's case that it was out of frustration she telephoned DVR on 13 February to tell her that she could not run the project without funding. When DVD contacted her about a supervisor's meeting that afternoon the claimant asked that she be allowed to bring ACO along with her and suggested to DVD that she bring someone from the management committee but this request was turned down. It was DVD's evidence that it would be inappropriate to have ACO at a supervisor's meeting. The claimant contended that she was suspended because of her telephone call on 13 February about the lack of funds for the childcare payments.

The engagement and payment of tutors was within the claimant's remit. It was the respondent's evidence that the claimant had paid herself for eight hours tutoring in late October, which were given during her normal working hours. The respondent considered that this amounted to double payment. The claimant further paid herself for five hours tutoring on 18 and 20 December 2006 although tutoring for the term had finished by this time and the group were on a study week. Payment for the tutoring was from an account reportable to FAS and no issues would be raised about such payments. It was the claimant's evidence that she had done the tutoring in October because others were not available and she had used the payment for her December tutoring to take the participants on a night out. The assistant co-ordinator (ACO) helped run the FAS side of the course and was the administrator of the FAS account. When the claimant presented the invoices for her tutoring hours to ACO she questioned the claimant's entitlement to be paid but on the claimant's confirmation to her that she was ACO inputted the invoices and prepared the cheques for signature. Later, a voluntary director (VDF) confirmed that the claimant was not entitled to payment for tutoring. When the claimant subsequently presented invoices for other classes ACO reminded her of VDF's position and the claimant never again presented an invoice.

Substantial payments, in the amount of €2,850, were made to the claimant's former husband who is a full-time lecturer in an educational institution. The respondent had paid €1,000 registration fee for the computer element of the course and believed that it would be delivered in the institute. The respondent had no issue about the tutor's competence. Its primary concern was the claimant's failure to comply with Pobal's guidelines for public procurement. There was a conflict

of evidenceas to whether the Pobal procurement guidelines had been given to the claimant. It was the claimant's evidence that they were not and she saw nothing wrong in hiring her husband. Two other tutors were also paid substantial amounts for modules that did not provide any certification for the participants. The claimant had physical control of the two cheque books until January/February 2007. The claimant frequently telephoned DVG at work and would then rush into have nine or ten cheques signed. DVG assumed that the invoices for the cheques had been shownto the claimant's line manager. DVG saw some invoices and she did not know that one of the payees was the claimant's husband. She felt that the claimant had taken advantage of her. The claimant's evidence was that she was always rushing.

Around October 2006 the respondent refused the claimant's request to hire a research assistant because research fell within the claimant's job description and there was no provision in the budgets for such hire. In making her request the claimant had implied that the information had been gathered and that the assistant would help to collate it. However, documentation came to lightduring the investigation showing that the claimant had employed NM, who was a tutor on the FAScourse, as a research assistant to help in the gathering of information. This documentation was produced to the Tribunal. It was ACO's evidence that the claimant had instructed her to pay NM forher research work under the guise of payment for tutoring. The claimant's position was that she hadsent the gender audit documentation to about 30 decision-making organisations and received mostresponses between May and August 2006. While she loved her job she was "up to her eyes" andvery stressed. DVD had told her set up a subgroup but she had not got around to it. NM knew thedifficulties the claimant was experiencing getting the replies and she offered to help. The claimantaccepted this and told NM that she hoped she could pay her.

The respondent was concerned that the research module was not developing and the gender mainstreaming training pack training pack was not being put together. In January 2007 DVR asked the claimant to set up a steering group to progress the research. DVR and DVG volunteered to be members of the steering group but it was never set up. The claimant's position was that she presented a progress report at the management meeting on 23 January 2007 and that she had set upa subgroup to compile the training pack. The respondent's witnesses who were present at that meeting refuted the claimant's evidence that a progress report was presented at it. Their first sightof the purported report was at the Tribunal hearing of the case. DVR believed that the documentpresented at the hearing was a fake and some of the information in it was false. While it was statedin it that a subgroup had been set up to compile the training pack it was the respondent's evidencethat this was not done until after the dismissal when the respondent was doing "a mopping up job"on the project. Had such a document been presented at the meeting several questions would havebeen raised on its contents. The respondent raised issue with the claimant as to whether she haddone the gender audits during the course of her employment, as had been indicated by her, giventhat she produced the originals in evidence although she had indicated to the respondent, in herletter of 14 April 2007, that these were stored in the office.

While the claimant maintained that she had been offered an extension to her contract, at the meeting of 23 January, this was denied by the respondent. It is clear from Pobal's letter of 9 February 2007 to the respondent that no extension for the project had been sought at that stage and the completion date remained at 31 March 2007. However, as elements of the project were not achieved within that time frame the respondent subsequently successfully applied to Pobal to extend the time for the completion of the project. Once the extension was granted a whole process

was started, the scale of the research was reduced and DVR got a group involved to develop the training pack. After this experience the respondent did not take on another employee on any EU funded project.

In her suspension letter of 14 February 2007 the claimant was asked to return the respondent's laptop. When it was returned the screen was broken and the history had been wiped. It was the evidence of the data recovery expert that the laptop had been used to access certain sites and download inappropriate material. DVD refuted the claimant's evidence that she had alerted her to the fact that a third party had engaged in such internet usage on the respondent's laptop while in her home. It was the respondent's position that the claimant, who is highly skilled in computers, would have the technical competence to have put sufficient protection on the laptop while in her home and ought to have done so. The claimant's position was that there was a crack on the screen and that she had not deliberately damaged it. The respondent had paid for internet access in her home because she sometimes needed it for work but when she discovered that a third party had unlawfully used it she asked to have it removed.

By letter dated 20 February 2007 the claimant was invited to a meeting on 26 February 2007 and was informed that she could have somebody with her in a supportive rather than a representative role. At the meeting the respondent agreed that the claimant's trade union official could act as her representative. The purpose of the meeting was to discuss sixteen items, contained in a document, arising from of the investigation. There was a dispute as to whether these issues were prioritised or reduced in number. DVG, who was chairing the meeting, began to go through the items. It was the claimant's evidence that she was shocked at the list of allegations outlined against her at this meeting. She and her representative requested copies of these and time to submit her responses. Copies of the document were given to them later in the meeting. The claimant's representative was un-cooperative and there was no proper discussion between the sides. The claimant's representative adopted a hostile attitude, voices were raised and the meeting became unruly. DVG felt intimidated and brought the meeting to a conclusion. The trade union representative denied shouting or being aggressive at the meeting.

Agreement could not be reached between the parties on the date for a further meeting and the chairwoman indicated that she would convene one within the next few days when they could discuss the issues calmly. Some attempts were made to reconvene: the respondent suggested that they meet on 1 or 2 March but the claimant's representative was unavailable on those dates and suggested 5 or 12 March for the meeting. The respondent's board met in late February and took the decision to dismiss the claimant. By letter dated 28 February the respondent dismissed the claimant.

Determination

The breakdown of the 26 February meeting was not the respondent's fault. However, the respondent acted hastily in dismissing the claimant without making more of an effort to reconvene the meeting. In particular the respondent was in breach of one of the core principles of natural justice in failing to provide the claimant with a full opportunity to respond to the allegations against her. Accordingly, the dismissal is procedurally unfair.

There was a conflict of evidence between the parties on many issues in this case. The Tribunal, having considered all the evidence and the documents produced, accepts the respondent's evidence

where such a conflict occurs. In considering the evidence the Tribunal is satisfied that the claimant, by her behaviour, breached the trust reposed in her by the respondent. In such circumstances the Tribunal unanimously finds that the claimant contributed substantially to her dismissal. The claimant was employed on a fixed term contract from 6 March 2006 to 31 March 2007. Accepting the respondent's evidence that the claimant's contract of employment had not been extended the natural ending of the claimant's contract of employment was to be 31 March 2007. Having been given a week's pay in lieu of notice the date of dismissal under the Act is 7 March 2007. It follows that the claimant's loss attributable to her dismissal is small in this case. Having taken the claimant's contribution into account the Tribunal awards the claimant the sum of €1,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)