

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE - claimant

CASE NO.  
UD363/2009  
MN368/2009  
WT161/2009

against

EMPLOYER - respondent

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. P. McGrath BL

Members: Mr. W. Power  
Mr. G. Whyte

heard these claims in Wicklow on 2 December 2009

Representation:

\_\_\_\_\_

Claimant(s) :  
No legal representation

Respondent(s) :  
Ms. Sinead Curtis BL instructed by  
Mr. Fabian Cadden, Fabian Cadden & Co., Solicitors,  
Main Street, Dunshaughlin, Co. Meath

The determination of the Tribunal was as follows:-

The Tribunal has carefully considered the evidence adduced in the course of this hearing. The issue of a dismissal was initially contested but, having heard the independent evidence of a member of An Garda Siochana, it was acceded to by the respondent that the employment terminated following an incident which occurred on the 31<sup>st</sup> of January 2009 and that the claimant was either dismissed or took it for granted that he had been dismissed as a result. The respondent therefore relies on the gross misconduct of the claimant as justification for the dismissal of the claimant. The burden of

proof rests with the respondent.

In essence, the evidence was that the employee and the claimant had a heated discussion regarding the cleanliness and general condition of the claimant's accommodation (as same was provided for or owned by the employer). The discussion took place between 1.00 a.m. and 2.00 a.m. in the morning after a long Saturday night shift.

The employer states that the employee pulled a knife during the course of this meeting or discussion and his version of events was backed up by his witnesses – his wife and nephew. The claimant vehemently denies that a weapon was produced and states that he was told he was dismissed and should leave the accommodation forthwith.

The claimant stated that the respondent's motivation for his removal was to create a job for the abovementioned nephew who was being trained up for the position of chef on the employer's premises.

There is a serious conflict in the evidence adduced. Without doubt if it was established that the claimant had produced a knife that would constitute an immediate and justified ground for dismissal. However, in considering all the evidence the Tribunal cannot accept that the claimant did, in fact, produce a knife on the evening in question. In making this finding the Tribunal relies on the fact that the Garda were not contacted on the night in question and it further seems unlikely that the nephew's would be put at risk when the employer and the employer's wife purportedly locked him into a corridor with the allegedly armed claimant.

The Tribunal does accept that there was a heated argument but cannot find that any act on the part of the claimant amounted to gross misconduct and therefore the claimant's claim must succeed where the employer cannot justify an on-the-spot dismissal.

The Tribunal does not make any award under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, nor under the Organisation of Working Time Act, 1997. The claims under this legislation are dismissed.

In the circumstances the Tribunal believes it just and equitable to award the claimant the sum of €18,000.00 (eighteen thousand euro) under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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