

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE – claimant

CASE NO.
UD106/2009
MN101/2009

against

EMPLOYER – respondent

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D Mac Carthy SC

Members: Ms A Gaule
Ms M Maher

heard this claim at Dublin on 9th September 2009
11th November 2009
12th November 2009

Representation:

Claimant(s): Ms Christine O'Donoghue BL, instructed by:
Ms Mairéad Moriarty,
Terence Lyons & Co., Solicitors, 4 Arran Quay, Dublin 7.

Respondent(s): Mr Paul Dunne
IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

The claimant commenced his employment with the respondent company on 3rd June 1997. The respondent company is a contractor, which holds a cleaning contract for a major train station. His employment was terminated on the 18th July 2008 for reasons of misconduct. At the time of his dismissal the claimant was employed as a site supervisor working on night shifts from 10pm to 6am at the train station. The respondent received a complaint from Irish Rail stating that on the night of 28th-29th May 2008 they could not find a member of the cleaning company onsite when they were contracted to be there.

The respondent company viewed Irish Rail CCTV footage, which the respondent company contended confirmed their complaint. The respondent company showed it to the claimant. The

claimant was then dismissed for leaving the job early and for allowing staff he supervised to leave early.

The claimant's representative made an application that the Tribunal should not view the respondent's CCTV footage. On the second day of hearing the claimant's representative explained that she had not yet seen the CCTV footage. The Tribunal gave the claimant's party time to view the CCTV footage in private and to clarify the claimant's position. Upon viewing the footage the claimant's representative contended that there was footage for days when the claimant was not working.

The claimant's representative confirmed that the claimant admitted to leaving early on one occasion, when his father was ill. He agreed that he had left early on other occasions, but contended that the work was completed. The claimant's representative contended that the claimant had not watched the CCTV, on his union representative's advice, when the company showed it to him.

The respondent's representative contended that the claimant had viewed the CCTV footage. He contended that the claimant had never previously admitted leaving work early on occasions other than the night his father was ill. He also contended that the claimant did not have a union representative with him when he viewed the footage. The respondent's representative explained that the footage belonged to Irish Rail and that not all footage related to the claimant.

The respondent's representative contended that the claimant left his employment early on six occasions, the 3rd, 4th, 5th, 6th, 24th & 27th May 2008. On each occasion the claimant signed out at 6am. The claimant's representative objected to the 5th May and the 27th May 2008. The claimant's representative accepted the 3rd, 4th, 6th & 24th May 2008, but contended that the footage was not very clear. The claimant's representative agreed that the claimant and the staff he supervised left the premises at the same time. The claimant's representative contended that while the claimant may have left early the work was completed and that it was not substantial grounds for dismissal.

The respondent's representative explained that the respondent company had to reimburse Irish Rail for hours charged that were not worked. The claimant had previously denied leaving early and had said that staff left the station around 5.50am.

The claimant's representative contended that the claimant had not received any training when he was promoted and that the promotion had only resulted in a pay increase of €1 per hour. She contended that the claimant lied about leaving early on occasions, other than when his father was ill, due to fear, but that he later agreed he had due to health and safety concerns. The claimant had passed all inspections. No warning was given to staff to stay on site even if work was complete.

The respondent's representative contended that the claimant did not admit what he had done straight away and that he was fraudulently signing out. The claimant's representative stated that at the appeal the claimant admitted leaving early on more occasions.

Determination:

The Tribunal, by a majority (Ms A Gaule dissenting), determines that the practice of staff leaving early when the work was done was not, in all of the circumstances a substantial ground for justifying the dismissal. It did merit some form of disciplinary action less than dismissal, and the

Tribunal finds that the claimant contributed substantially (within the meaning of section 7(f) of the Unfair Dismissals Act 1977, as amended) to his dismissal. We attach great importance to the fact that the claimant, as supervisor, did not make full admissions when asked. For this reason the Tribunal's award will be greatly reduced. The Tribunal, by majority, is of the view that the sum of €5,000.00 (five thousand euro) is just and equitable, having regard to all the circumstances under section 7(c) of the Act, and we award compensation in that amount.

The Tribunal awards the claimant €4,021.32 (four thousand and twenty-one euro, thirty-two cent) in respect of six weeks' notice.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)