

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**

Employee

**CASE NO.**

MN507/09  
UD485/09

**Against**

Employer

**under**

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr. M. Flood  
Ms M. Maher

heard this claim at Dublin on 30th October 2009, 10th December 2009 and 11th December 2009

**Representation:**

Claimant: Ms Mary Paula Guinness BL, instructed by O'Mara Geraghty McCourt, Solicitors,  
51 Northumberland Road, Dublin 4

Respondent: Mr. Marcus Dowling B.L., instructed by Mr John Doyle, Dillon Eustace, Solicitors,  
33 Sir John Rogerson's Quay, Dublin 2

The determination of the Tribunal was as follows:-

**Respondent's Case:**

The Group Financial Controller (IS) gave evidence. The respondent manufactures and retails furniture. There are approximately 13 stores in Ireland. The Regional Director responsible for Irish activities was BB. When BB was made redundant initially the management of the stores was run from Scotland. AG subsequently took over the role and the claimant then reported to her.

IS was asked to conduct a disciplinary interview on 28 October 2008. In advance of this meeting he was furnished with copies of e-mails sent between AG and the claimant. The purpose of the meeting was to discuss administration errors occurring in the store and twelve other issues. A letter dated 22 October 2008 was sent to the claimant outlining all the issues to be discussed. The

disciplinary meeting was postponed until 4 November 2008.

Issue one concerned excessive discounts being given without reasonable explanation. IS focussed on one order. A 23% discount was very excessive of what a Store Manager was authorised to do. IS explained that a Store Manager could only offer a 10% discount on normal orders otherwise he should talk to Head Office and also liaise with his Line Manager.

Issue two concerned the abuse of a family and friends discount allowed on a regular basis. The claimant was aware that staff were giving a high volume of discounts. AG had reviewed the order book. Issue three referred to the incorrect posting of cash received from customers to wrong accounts. The claimant said that the carrier ( C ) had delivered furniture to a Mr. S's home without authorisation. It was believed that Mr. S. had not paid the balance of his account. The claimant faxed a copy of credit card slip to head office. The credit card receipt referred to someone else's and this led to confusion. There was no name on the receipt.

Issue four concerned the claimant requesting a driver in carrier C to do "homers" (nixers). The claimant admitted that in order to facilitate a customer after hours he had enquired from the driver if he could make a delivery. IS said that this arrangement would cost the company a profit margin. IS stated that all deliveries are done through C.

Issue five related to the use of other carriers on a pay as you go basis without putting the receipts through the company's books. IS stated that this would give the company insurance problems. The claimant said that a customer was facilitated by arranging with a local courier to deliver goods. Issue six related to an incorrect response from the claimant raised with him on 15 October 2008 in relation to customer orders. The claimant believed this to be inaccurate. In issue seven the respondent cited the claimant's failure to respond on time when AG queried the claimant's written response. The claimant took great offence to this point. Issue 8 referred to the failure of the claimant to provide a written statement of the matters surrounding the loss of €6000. The claimant stated that he was seeking legal advice in the matter.

Issue nine concerned the claimant's failure to control his stock correctly. IS said that this was not acceptable. The claimant responded by saying he had received no proper training. IS contended that M had trained him and had even asked him was he sure of the process and the claimant said that he was.

Issue ten referred to products being despatched to customers, which had not been paid in full or indeed at all. The claimant contended that it was not his job to despatch orders. IS said that procedures were not followed.

Issue eleven referred to the amendment of stock and order appropriately. The claimant said that a customer tried to cancel a chair and the claimant said she would have to take it. Procedures did not allow for a part cancellation. The company was left with a chair and the claimant should have contacted AG in the matter.

Issue twelve referred to the claimant's request for training on Cimpac, the company's computer. When the training was provided by MG the claimant had commented that it had not been required. The claimant contended that the real reason for MG's visit was to do an impromptu stock take and that the colleague who had accompanied her began an internal audit.

IS deemed these issues to be very specific and at the end of the meeting he asked the claimant why

he had not worked more closely with Head Office and AG. The claimant indicated that he did not recognise AG as his Line Manager and did not accept her authority.

Based on further discussions with various people afterwards he took the view that the relationship between AG and the claimant had broken down. The claimant was not accepting company directions and this was deemed to be gross misconduct. This led to his dismissal from the company. The claimant declined to appeal his dismissal, which was communicated through his solicitors.

Under cross-examination IS said that the claimant on commencement of his employment reported to CF and then BB took over in 2007 until July 2008. On 1 July 2008 AM, Group Chief Executive Officer took over in the interim. He contended that the Cimpac manual should work uniformly. He was only vaguely aware that the claimant had made a bullying complaint.

Before meeting with the claimant at the disciplinary interview he was supplied with a series of e-mails and reviewed them. At that meeting the claimant had given short answers. IS carried out further investigations, which threw up discrepancies. He did not relate these back to the claimant afterwards. They had reached the point whereby the claimant had not accepted the company's authorisation. He took the view that trust had gone. He was unhappy with the level of independent decision making by the claimant. The company needed to have consistencies in place.

#### **Claimant's case:**

The claimant gave evidence. He was appointed Retail Sales Manager of the Stillorgan branch of the company on 6 December 2006. He reported to the Director of Operations, CF. The staff handbook provided for an on the job training programme. The Stillorgan branch was being refurbished at that time. He spent two days in the Blanchardstown store helping move furniture. He spent two days training in Derry and only three orders issued that week. A four-day induction course in Scotland was cut short and he was only there for one and half days. His first day working in Stillorgan was 21<sup>st</sup> December 2006. Two managers had been sent from Bangor to assist him. They spent one hour with him. On the administration side he inherited 100 problem orders. CF helped him out with these difficult orders.

He had a meeting with CF about concerns he had in dealing with customers. CF was very casual and told him to try and placate customers. Because he had not received training he telephoned three other Managers who helped him out.

In April 2007 CF was made redundant and BB was appointed Director of Operations. BB insisted that the claimant had no authority in the Store. BB said it was "my way or the high way". The claimant was told to do what he could to get a sale and under no circumstances were discounts permitted. After one year he found BB unapproachable. On 1 May 2008 he e-mailed BB seeking his opinion on some orders. BB responded the following day saying that the claimant was the manager and was expected to manage and resolve issues.

On 6<sup>th</sup> May 2008 the claimant e-mailed AM with an official complaint. The claimant attended a grievance meeting on 22 May 2008 with IS and raised his grievances. His points of grievance were bullying, holidays, lack of support staff, proper training, a banking issue and that his name and credibility were called into question. He was assured that these issues would be addressed.

At a managers' meeting held some five and half weeks later he was informed that the company was being restructured and that BB's position was being made redundant. AM took over responsibility

for the Irish operation with effect from 1 July 2008 while AG was on the ground looking after Ireland.

At a further meeting held with AM and IS the claimant was asked to withdraw his complaint of bullying against BB. He said that BB had left and he saw no need to do so. He re-furnished his issues again. His Assistant Manager had left through promotion. He had hurt his back lifting furniture and had to have three physio sessions. He sought reimbursement for these sessions. The only training he had received in manual handling was from a female in HR who showed him how to lift an empty box. He learned nothing that day.

The claimant believed AM was his boss and that AG assisted AM with his work. If he received correspondence from AG he always responded to it.

He attended a meeting on 14 October 2008 with IS, AG and DMcC. An audit had been carried out in the branch prior to this with a list of issues. He responded to these issues the following day. IS asked the claimant for a written statement on what his understanding was on the bank issue that had occurred the previous October.

The claimant explained to the Tribunal that the procedure for lodging money in the bank. He walked to the Bank with the lodgement and handed the money over to the teller. No receipt was given. Stillorgan was the only branch that used this procedure.

A meeting was held on 21 October 2008. AG conducted the meeting. The claimant had not furnished further responses to the audit issues and also he had not supplied his written statement on the bank issue. AG raised other concerns. At the conclusion of the meeting the claimant was asked to attend a disciplinary meeting the following Tuesday. AG asked the claimant if he understood how serious this was and that this could lead to him being fired. The claimant said he did.

The claimant attended the disciplinary meeting on 4<sup>th</sup> November 2008 and responded comprehensively to all the issues. There was no follow up meeting between him and the respondent to discuss the differing accounts of the twelve points raised. He was suspended prior to his dismissal, which was effective from 10<sup>th</sup> November 2008. He chose not to appeal the decision to dismiss him.

The claimant established loss for the Tribunal.

Under cross-examination the claimant contended that his raising of the bullying complaint led to his being dismissed. He said that BB was authoritarian and procedures were ad hoc. His understanding was that when AM took over the Irish operation that AG was assisting him in this role. He contacted AM directly. His first involvement with AG was when she requested he withdraw his bullying complaint. He contended that AG was not his Line Manager. He replied as a courtesy to any instructions he received from AG. AG never told him that she was in charge. He believed AG assisted AM as per AM's instructions. She visited Ireland more frequently than AM did.

As he did not want the banking issue recorded on his personnel file he raised the issue at the grievance meeting on 22 May 2008. He felt the issue was hanging out there, he wanted clarification and he wanted closure to the matter. He had already given a verbal statement to BB and saw no need to furnish a written statement. He had offered to pay back the money. He sought legal advice on this issue afterwards.

In relation to queries on orders following his meeting on 14 October 2008 he contended these would not have arisen had he known correct policies and procedures. He contended that AG accused him of doing “homers”. He wanted to facilitate customers when he could. He wanted to explore all avenues.

### **Determination:**

After eighteen months of employment the claimant raised a number of issues in a lengthy e-mail dated 6<sup>th</sup> May 2008 to the Group Chief Executive Officer regarding his terms and conditions of employment and the fact that he was being bullied by his then Line Manager. He attended a grievance meeting with the Group Financial Controller on 22<sup>nd</sup> May 2008 and raised his grievances.

These grievances were not addressed until 16<sup>th</sup> September 2008 when IS asked him to withdraw his bullying complaint and to tell him what his grievances were. The claimant refused to drop the bullying allegation but acknowledged that he wished to put it behind him as his Manager was now gone as he was made redundant. He pointed out the grievances outlined in his original e-mail of 6<sup>th</sup> May 2008.

In a letter dated 26<sup>th</sup> September 2008 to the claimant the Group Financial Controller pointed out that there was no evidence he had holidays owed to him. It was also pointed out that his terms and conditions of employment were all part of his contract of employment. While that may well have been the case, the Tribunal finds this to be an inadequate response particularly in circumstances where other store managers had an assistant manager, which facilitated them by not requiring them to work every Sunday as the claimant did.

In addition to that there were exchanges of emails, which indicated as far as the company was concerned that the claimant refused to recognise AG as his direct Manager.

The evidence of the company was that the investigation, following the twelve issues discussed at the disciplinary meeting, threw up other issues none of which were put to the claimant. At the very least these issues should have been raised with the claimant and while it may be the case that the outcome would result in a dismissal, the failure to give the claimant an opportunity to deal with these, amounts to unreasonable behaviour on the employer’s part. In those circumstances the employer then decided to dismiss the claimant for gross misconduct.

It is clear to the Tribunal that the claimant essentially refused to acknowledge AG as his Line Manager. He clearly had difficulties taking instructions. Furthermore, he did not avail of the appeals procedure. The Tribunal finds that the claimant was unfairly dismissed. However, it is clear from the evidence that the claimant did by his own actions contribute partly to his own dismissal. On that basis the Tribunal makes a reduced award of €15,000 under the Unfair Dismissals Acts, 1977 to 2007. The Tribunal also awards the claimant €797.57 being the equivalent of one week’s notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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