

## **EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM OF:**

EMPLOYEE

- claimant

MN735/2009

**CASE NO.**

UD715/2009

**Against**

EMPLOYER

- respondent

**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: Mr M. O'Connell B.L.

Members: Mr R. Murphy

Mr J. Maher

heard this claim at Dublin on 17th February 2010, 12th May 2010 and 6<sup>th</sup> September 2010.

**Representation:**

Claimant: Mr. Conor Keogh B.L. instructed by Mr Seamus Whelan, Carvill Rickard & Co,  
Solicitor, 1 Main Street, Raheny, Dublin 5

Respondent: ESA Consultants, The Novum Building, Clonshaugh Industrial Estate, Dublin 17  
- on 17<sup>th</sup> February 2010 and 12<sup>th</sup> May 2010  
No appearance by or on behalf of the respondent on 6<sup>th</sup> September 2010.

The determination of the Tribunal was as follows:-

It was agreed by the parties that minimum notice, under the terms of Minimum Notice and Terms of Employment Acts, 1973 to 2005, had not been given to the claimant and nor had he been paid in lieu of such notice.

**Respondent's case**

The first witness called by the respondent was a SIPTU official (hereafter referred to as SU). SU was the union official who accompanied and acted on behalf of the claimant at the disciplinary/appeal meetings convened by the respondent.

SU stated that the appeal process was transparent and that it was the first time she was brought in for such a case with the respondent. The appeal was lengthy and personal. As a result of this appeal the respondent decided to allow the claimant to resign with a financial package.

Initially the claimant agreed to accept this package but had issues concerning holiday pay. However over the next few days things unravelled and the claimant wanted to take the matter to the Employment Appeals Tribunal and the financial package was not paid.

SU stated that she believed that the reason for dismissal was clear to the claimant and that there were fair procedures in accordance with union policy.

SU confirmed that the charge against the claimant was gross misconduct and she defined this as “a whole run being made redundant”. The representative for the claimant referred to the booklet which had been submitted to the Tribunal and in particular to page two of the code of procedure and asked SU if this is what the company relied on, to which she answered yes.

It was put to SU that the claimant will say that he was never furnished with the code of procedure and SU stated that this would surprise her.

It was also put to SU that making a mistake in a run is not defined as gross misconduct. SU said that the claimant was already on a final written warning and that this made life difficult.

The second witness called by the respondent was the father of the chapel, which is the equivalent of the shop steward. (hereinafter referred to as FOC). FOC stated that he had been informed of a serious error in a print run involving two printers and was told by the company that a final written warning was to issue to one printer and that the union had to become involved in relation to the other printer (the claimant) because he was already on a final warning.

The print manager was responsible for the investigation of the incident. During a disciplinary meeting the claimant made an accusation that the error was the fault of the print manager and verbally attacked him alleging that he was useless. According to FOC this constituted gross misconduct. Subsequent to the disciplinary hearing the claimant was dismissed and given an opportunity to appeal.

FOC was present at the appeal hearing and told the Tribunal “we did not have a defence, we could not say he was not involved. Basically it was an appeal to try and save his job”.

On the second day of the hearing the Tribunal was informed that the respondent had entered into examinership. The cost of the claimant’s error according to the claimant was €11,000 while the respondent maintained it was €20,000.00.

The nighttime manager gave evidence. At the time of the claimant’s dismissal he was the print manager. From the time the claimant commenced he had a good rapport with the claimant but as time went by cracks in the claimant’s ability as a printer started to show. He had to work constantly with the claimant to improve his performance. The respondents produced a log of issues that had occurred with the claimant. These issues were ongoing with the claimant; the lack of the claimant’s competency was now deemed to be negligence. On the 23<sup>rd</sup> January 2007 he informed the claimant if there were any more issues with his work he would be given a verbal warning. From this time to the claimant’s dismissal the respondent had problems with the claimant’s performance. The company would accept errors in the first half hour of a shift but after this a printer should have spotted a problem. Two incidents eventually led to the claimant’s dismissal.

The claimant was issued with a verbal warning in writing on the 20<sup>th</sup> May 2008 as a result of a job

that the claimant ran on a printing press. Some of the covers of the print job had a yellow line going through them, this line had been on his “first off” and the claimant should have noticed this. As a result of this error the covers had to be re-printed. On the 1<sup>st</sup> August 2008 the claimant received a final written warning to run for a period of six months, because of the severity of his error. On this occasion the claimant had run off 30,000 sheets with missing type. Another printer had taken over from the claimant and ran another 30,000 sheets. The witness maintained that after the claimant was issued with this final written warning, he continued to show a blasé approach to his work and when he erred the claimant would always try to blame someone else.

In January 2009 the claimant took over from another printer D, the claimant ran 18,000 back up sheets with an error on them, this cost the company approximately €5000.00 as they had to be reprinted and they also lost hours of production. On the 9<sup>th</sup> January 2009 witness and the father of the chapel (FOC) met with the claimant in relation to his latest error. The claimant had tried to blame D, whilst the respondent maintained the claimant had run the job blind and had not checked his “first off”. Witness informed the claimant that he was at the dismissal stage however they would not make a decision yet and there would be a further meeting on the 12<sup>th</sup> to decide his fate. The claimant was more apologetic at this meeting however the company had to consider its customers and the company as a whole and it was decided to dismiss the claimant. The claimant appealed this decision but his dismissal stood.

This witness was involved in the claimant’s dismissal however it was the managing director’s ultimate decision. He had explained to the managing director all of the issues he had with the claimant’s performance up to the time of his dismissal. The claimant’s errors could have lost them a contract and if they had lost contracts at this time the company may have had to consider redundancies.

Under cross-examination this witness confirmed that the claimant did not have a written contract. He explained when somebody commenced employment, they are introduced to the union representative and informed if they need any information regarding procedures, to ask the “father of the chapel”. Both him and FOC had explained the disciplinary procedures to the claimant. The claimant could also have requested the documented procedures from FOC. There were no reasons quoted on the written warnings as to why the claimant received them. He accepted that the company were relying on SI 146 of 2000 Grievance and Disciplinary Procedures. There were procedures that the claimant had to adhere to in the course of his work. These were produced by the staff in conjunction with the management. Other printers were also involved in the claimant’s errors however they had not furnished the claimant with any information or statements in relation to this. He accepted that there were three people involved in the final error but it was a collective responsibility. However, the witness said they were concentrating on the claimant’s errors and would not normally discuss other staff errors with employees. There were no notes of the meetings apart from the issue log. He had not told the claimant that he could be fired on the 9<sup>th</sup> January but would have informed him that he was at the end of the road and that he could lose his job. The claimant was not issued with a written decision before his appeal. The claimant had received no written invitations to any of the meetings. The claimant was informed verbally of the process of an appeal meeting. He had constantly given the claimant verbal warnings throughout his employment. He never recorded these informal verbal warnings. It was because of the size and nature of the claimant’s error that they had skipped the second written warning stage. He had given the claimant verbal feedback between the meeting on the 9<sup>th</sup> January and the 12<sup>th</sup> January.

The claimant was well aware of the possibility of him being dismissed on the 12<sup>th</sup> January. He was

informed verbally as to who would be attending the meeting on the 12<sup>th</sup> January. An appeal meeting took place on the 15<sup>th</sup> January and no written decision of his dismissal was given to the claimant before this meeting. It was suggested to him that the procedures used were unfair; he disagreed with this, as the claimant would have been dismissed previously to this if they had not adhered to the procedures.

In reply to questions from the Tribunal he explained that he had to move the claimant to the least challenging print machine this was black on black. He had 11 to 12 printers working for him and he would rank the claimant at the half way mark but when he made errors he did not accept responsibility.

**Claimant's Case:**

On 6<sup>th</sup> September 2010 the claimant gave evidence. His employment was terminated on 12<sup>th</sup> January 2009. He did not secure new employment in the period January 2009 to May 2009. He set up his own business in May 2009 and is trying to build up his business.

**Determination:**

The Tribunal noted that there was no appearance by or on behalf of the respondent on the third day of the hearing, which has recently gone into liquidation. On the basis of the evidence given on 17<sup>th</sup> February 2010 and 12<sup>th</sup> May 2010 the Tribunal finds that the claimant was unfairly dismissed.

The Tribunal believes that the claimant's performance at work was not of an adequate standard and that he contributed greatly to the circumstances surrounding his dismissal. However, the Tribunal also believes that there were significant deficiencies in the manner in which the respondent dealt with the claimant's performance and the procedures used to dismiss him.

The Tribunal heard evidence of the claimant's loss and commends him for setting up his own business in these difficult times. In the circumstances, it awards the claimant €35,000 under the Unfair Dismissals Acts, 1977 to 2007. The claimant's claim for relief under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was not contested by the respondent. Accordingly, the Tribunal awards the claimant €4600.00 being the equivalent of four weeks 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)