

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE

CASE NO.  
UD2064/2009  
MN1931/2009

against

EMPLOYER  
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: Ms. N. O'Carroll-Kelly BL

Members: Mr. F. Cunneen  
Ms. M. Mulcahy

heard this case in Dublin on 3 December 2010 and 7-8 July 2011

Representation:  
\_\_\_\_\_

Claimant(s):  
No legal or trade union representation

Respondent(s):  
Mr. Eoin Martin, Lyons Dermody, Solicitors,  
43-46 Parnell Square West, Dublin 1

The determination of the Tribunal was as follows:-

The claim

On 11 September 2009 the Tribunal received an unfair dismissal claim from a man who was employed by the respondent from June 2000 to 19 March 2009. He described his occupation as "shop assist/van driver". He believed that he had been unfairly dismissed "from a job that (he) was diligent and hardworking at".

Detailing his claim, the claimant stated that he had been employed as a sales assistant until 2005 when he was "promoted to van driver for the company" whereupon he remained "in this position" until his dismissal. His day would begin at 9.00 a.m. with the collection of the van from a nearby

pickup area. He always felt that it was a big security risk (for himself, for customer deliveries and for the van itself) that he was the only person in the van processing deliveries and delivering them to customers' homes. He "tried numerous times to get an extra person" with him but to no avail.

The claimant stated that in the summer of 2007 he was held at knifepoint during a robbery, that he had no-one with him in the van at the time, that no-one was put in the van with him after the attack and that he was not offered any help.

Stating that he had to run errands and do deliveries for the respondent on Wednesday 21 January 2009, the claimant asserted that he had to get the van's rear door checked at a crash repair centre. On his return to the respondent's premises he was questioned on where he had been and he replied that he had been getting the van door checked. He was then accused of lying and an argument ensued which took place on the shopfloor in front of customers. The respondent thought that he had been making personal use of the van. After this altercation the claimant was summoned to an office where he was suspended for one day without pay and was given a written warning. On Friday 23 January 2009 he returned to work but was taken off van duties and was given work to do on the shop floor.

The claimant was on sick leave for about a week in late February or early March 2009. On his return he was working in hardware and the stocking of shelves from the stockroom. After a visit to the bathroom two managers said that he had been there for twenty minutes. After the claimant replied that he had only been gone for five minutes he was given a verbal warning. However, a few minutes later, one of the managers returned to say that he had not realised that the claimant had received a written warning for the van incident and that, therefore, the claimant was now suspended for a week after which his future with the respondent would be discussed. This was 12 March 2009.

On the claimant's return on 19 March 2009 the respondent let him go. He did not get any notice but when he subsequently got his final pay packet he discovered that the respondent had paid him notice.

#### The defence

It was stated in a reply on behalf of the respondent that the claimant had been paid his minimum notice and that he had had a history of disciplinary offences such that his last final written warning had been issued on 3 February 2009.

The respondent contended that, on Friday 6 March 2009, the claimant left the respondent's supermarket premises at 5.00 p.m. and, when asked on Saturday 7 March 2009 as to his whereabouts between 5.00 p.m and 6.00 p.m. the previous day, claimed that he was at all material times present on the company premises. Also on that Saturday, the claimant approached a supervisor asserting that he had been on the premises until 6.00 p.m. the previous day and had the supervisor attest to this on the claimant's clock-in card. However, subsequent examination of the store's cctv footage indicated that the claimant had left the respondent's premises at 5.00 p.m. rather than 6.00 p.m. as alleged.

It was further asserted that a disciplinary hearing had been convened (in respect of which the claimant waived his right to have someone present with him). The facts were confirmed and the decision was taken to dismiss the claimant.

**Determination:**

The Tribunal heard sworn testimony from many witnesses for the respondent and from the claimant himself. The claimant's case was not supported either by the video evidence or other data available to the Tribunal. The evidence available was of a person who, despite needing and receiving close supervision was nonetheless encouraged by his employers to make progress in his occupation. His unexplained absences from duty, and often self-contradictory justifications for these, did not support his allegations of unfair dismissal and, accordingly, the claim fails.

The Tribunal noted that the claimant had received the respondent's disciplinary procedure and that the claimant had actually sent in the said procedure with his claim to the Tribunal.

It was explained to the claimant in detail that he had a right to representation and the respondent felt so strongly about this that it got him to sign a waiver. Regarding an appeal, the claimant had appealed to the respondent's principal in the past when he had been taken off van duties.

The Tribunal accepts that the disciplinary process was not as thorough as it could have been but the Tribunal was satisfied that the claimant had a copy of the respondent's disciplinary procedures (which included the appeal process) and, also, that the claimant was fully aware of the appeal process given that he had used the process informally in the past. After hearing very extensive oral testimony the Tribunal did not find the respondent's overall disciplinary process to have been wrong but merely that it had not been fully documented.

In accordance with the above reasoning, the Tribunal unanimously finds that the claim under the

Unfair Dismissals Acts, 1977 to 2007, fails.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, also fails because the claimant received a minimum notice payment and because the respondent was not shown to have been in breach of the said legislation.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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