

## EMPLOYMENT APPEALS TRIBUNAL

**APPEALS OF:**  
EMPLOYEE

**CASE NO:**  
UD2051/2009  
MN1921/2009

- *claimant*

against  
EMPLOYER

- *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. J. Lucey

Members: Mr. A. O'Mara  
Ms. H. Henry

heard this appeal in Limerick on 19 July 2011

#### **Representation:**

Appellant: Mr. Keane Kelly BL instructed by:  
Aiden Barry, Aiden Barry, Solicitors, Roche House  
8, Bank Place, Limerick

Respondent: Mr. Michael Purtill BL instructed by:  
Twomey Scott & Co., Solicitor, 80, O'Connell Street, Limerick

The decision of the Tribunal was as follows:

#### **Respondent's Case:**

The Operations Manager gave evidence. He explained the respondent company was involved in the hiring of vehicles to the public. There were seven branches located in airports around the country. He explained that his role was to oversee the whole operation of the company with a stock of over 2,000 vehicles. Customer service was very important as well as correct documentation completion; the respondent's premises were regularly "mystery shopped". Failure to do this could result in loss of customers or non-payment as documentation not been completed correctly by the employee. Incorrect form completion was "a big deal". No signature on a form meant no payment.

The claimant was employed in the branch at Shannon airport and reported to his day-to-day Manager (CF). (This witness did not attend the Tribunal hearing to give sworn evidence). CF told the witness that there were constant problems with the claimant. He was constantly late or left early, he had left the desk unattended for two hours with nine customers waiting irately to be served and his general demeanour was poor.

In November 2008 the witness called the claimant to his office, CF also attended. He was informed of the problem with his constant bad timekeeping and incomplete form filling. He did not argue and admitted he could do better. He was told he would have to improve or if not they would have to “go down another route”.

On January 2<sup>nd</sup> 2009 CF signed a letter drafted by the witness to the claimant. It referred to a conversation in December regarding the claimant getting a colleague to cover his shift without prior permission. He had been previously been warned about this. The letter also referred to his attitude towards customers, mistakes on completing rental agreements and his poor timekeeping. He was informed this was a final written warning and if he ignored any reasonable instructions in the future a dismissal may be issued. He was informed he could appeal this warning to the witness within seven days. He did not.

The witness explained that they believed the claimant carried out D.J. work at night and this was the reason he attended work late or changed shifts without permission.

A record was shown to the Tribunal of the list of his time keeping between January 1<sup>st</sup> 2009 and June 11<sup>th</sup> 2009. The claimant had been recorded late on thirty-nine occasions. The witness explained that the clocking in system gave a five-minute grace period to clock in. He also had nine unauthorised absences.

On June 10<sup>th</sup> 2009 CF meet the claimant at the entrance to the airport building and told him he wanted to speak to him. He asked did he want to go for a coffee but said no, they would stay were they were – the public smoking area. The claimant was informed that he was dismissed, that he would be paid his notice and could retain the use of the company for a further four weeks.

The claimant wrote to the witness and CF on July 14<sup>th</sup> 2009 concerning the manner in which his dismissal was conducted and receiving no reasons for it. He requested a reply within twenty-one days or he would seek legal advice.

On cross-examination he stated that he was based in Limerick but would attended all seven premises regularly. He explained that staff clocked in and out on the company’s computer located in the terminal building. This system had been introduced in August 2008. He refuted when put to him that an employee had commenced their shift on arrival on the premises to park their car.

When asked what the witness meant by the claimant’s demeanour, he explained that the claimant seemed to have a lack of interest in his job as a rental agent. He explained how the employees made a commission on sales. They received a 4% payment on the extra sales they made with customers for insurance, the supply of child seats, the supply of GPS systems, the cost for credit card payments and amongst others. He refuted that charges of up to € 55 were charged for credit card payments.

He explained that the desk could be left unattended for a few moments and a contact number was left in view for intending customers to contact. When asked why the respondent had not followed the steps laid out in their own employee handbook when dealing with disciplinary procedures he explained that the claimant’s disappearance from the desk and timekeeping equalled gross misconduct. Therefore this meant dismissal. He said that he felt the respondent had complied with the “spirit of the procedures”.

When asked by the Tribunal how many minutes late the claimant had been on a number of occasions he replied that he did not have those records with him. He did not know if any verbal warnings issued by CF were recorded. He did not know if the claimant was offered to bring a

representative or colleague to any meetings.

### **Claimant's Case:**

The claimant gave evidence. He had originally worked for another car hire firm at the airport. A position arose in the respondent business and CF offered him the position.

He disputed he had been late for work on the occasions mentioned. He explained that his workday commenced when he arrived at the compound where the hire cars were kept to park his car. It could take ten to twenty minutes to get the courtesy bus to the terminal or he could be dealing with customers at the car compound. He also stated there had been no problems with his paperwork or administration.

He told the Tribunal that the respondent had a problem with him because he was not selling enough extras for the company. The use of credit cards could bring a charge of € 55 to a customer. Some customers were told if they were driving beyond Galway they were driving into Northern Ireland and would have to purchase insurance for that area. He felt the respondent was very unprofessionally run. He told the Tribunal that there was a lot going on on the premises that the respondent's witness was unaware of. The desk could often be left unattended, as the terminal would be quiet if flights were not due in or out so a notice was left on the counter with a contact number for the customer if required.

In respect of the nine customers left at the unattended desk he explained that their flight was due to arrive at 7.45 p.m., he was due to finish soon after. He put up the notice and tried to contact CF to tell him he had to leave to fill a prescription but to no avail. He explained that staff would also work later than their shift if the incoming flights were delayed.

He told the Tribunal that he was told on numerous occasions to "pump up sales" and to "leave his conscience at the door on the way in and pick it up on the way out". He felt like he was being encouraged to rob the customers.

On June 10<sup>th</sup> 2009 he was walking towards the terminal and spotted CF. He went over to speak to him in the public smoking area. He was not offered to go anywhere else and was told he was gone and given four weeks notice. He was not allowed to go to the respondents' desk in the terminal to collect his things. He gave evidence of loss.

On cross-examination he explained that he did some D.J. work but did not consume alcohol while working there. It did not affect his job with the respondent company. He said that he felt very strongly about the allegations made against him. He agreed he had not appealed the warnings given to him. When dismissed he attended his solicitor for advice. He said that after the meeting of November 2008 he was overwhelmed and felt "the guns were out for him". He had mentioned to CF if he was being made redundant at least he would have something to bring back to his family.

### **Determination:**

The Tribunal have carefully considered the sworn evidence and submissions in this case. The Tribunal finds that the respondent's disciplinary procedures were not carried out correctly in this case. The claimant was not given prior knowledge of meetings and was not offered the right to bring a representative or colleague with him.

The Tribunal finds the claimant was unfairly dismissed but did not mitigate his loss to its full extent. The Tribunal award the claimant sum of € 14,000 under the Unfair Dismissals Acts, 1977 to

2007.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was dismissed.

Sealed with the seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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