

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *Claimant*

UD1453/2010  
MN1398/2010

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 T. Taaffe

Members: Mr R. Murphy  
Mr N. Dowling

heard this claim at Dublin on 15th December 2011

**Representation:**

Claimant(s) : Ms Joanne McInerney, Able, Solicitors, 72 Tyrconnell Road, Inchicore, Dublin 8

Respondent(s) : In Person

**Respondents Case**

The respondent gave evidence of observing the claimant from his office window. He said the claimant and another employee were on the factory floor having a chat and laughing. The claimant on the day in question was there to do some glazing work. He called the claimant to his office and explained that he should be here to work and not talking. He recalled the claimant saying he was looking for the correct units but did not believe this to be the truth. He did not know what they were talking about. A short time after that he said that both the claimant and another employee resumed a conversation; they were sneering and looking up to him in the office. He went on to the factory floor and the claimant asked "what's the problem now". The claimant threw a shovel and used foul language and walked away.

During cross examination the respondent agreed there were raised voices on the day. He told the Tribunal he was regularly warning the claimant about his behaviour, almost on a daily basis. He was unable to provide any records of verbal or written warnings.

### **Claimants Case**

The claimant gave evidence of commencing employment with the respondent company in November 2006. His work varied from services, deliveries, glazing and fitting glass to frames. He did not recall receiving any warnings about his conduct and described his working relationship with SM as not good and they didn't get on. On the day of the dismissal he had been out on a delivery in the morning and returned to the factory floor around 11.30am. He had glazing work to do but was unable to locate the correct frame for a particular job and sought assistance from another employee. They both looked through racks in an attempt to get the correct frame. When leaving that job aside to start another one he was called to the office by SM. He said SM asked him why he wasn't working and accused him of being lazy and not doing his job. Having tried to explain the problem with locating the correct frame SM told him to return to the factory floor. He told the Tribunal he went to a job he could do and picked up a plastic glazing tool to begin work. He turned around to see SM approaching him shouting. SM was using abusive language and saying "get out and do not come back". The claimant said he dropped a glazing tool and left the premises. The following day the claimant contacted the business partner of SM who confirmed that he could not go back as SM did not want him back.

Another employee BH who witnessed the incident on the shop floor gave evidence of trying to assist the claimant locate the correct frame from a rack and seeing SM calling the claimant to his office. He also told the Tribunal that when the claimant returned to the factory floor SM followed him although he did not know what SM said he saw him pointing to the door.

### **Determination**

The Tribunal carefully considered all of the evidence adduced by the parties. The Tribunal is satisfied that the claimant was dismissed by the respondent in circumstances where there was no evidence presented of any justifiable grounds for such dismissal.

The Tribunal find the claimant was entitled to two weeks minimum notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and is further satisfied and determines that the claimant was unfairly dismissed and that his claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and award the claimant a sum of €10,000.00 in respect thereof.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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