EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF: CASE NO.

UD450/2010
EMPLOYEE **- claimant** MN412/2010

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 P. O'Leary BL

Members: Mr J. Goulding
Mr J. Flannery

heard these claims at Dublin on 14 November 2011,
31 January and 4 April 2012

Representation:

Claimant: Mr Noel O'Hanrahan, O'Hanrahan Lally Solicitors,
Dublin Law Chambers, 77 Talbot Street, Dublin 1

Respondent: Mr Michael McGrath, IBEC, Confederation House,
84-86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

The claimant was employed as a quality controller in the respondent's warehouse facility from September 2003. The respondent operates a distribution centre for the retail trade with some 300 employees at the relevant times in this case. Some fifteen of these employees were quality controllers. It is common case that the claimant was very good at his job. The claimant received a verbal warning with a one year shelf-life on 7 March 2008 for having left work some five minutes early at the end of a late (5-00pm to 1-00am) shift on 3 March 2008.

On 7 June 2009 the claimant made a complaint that on 4 June 2009 he had been bullied and harassed by the general manager (GM). Arising from this complaint it was found that, in fact, the claimant had breached the respondent's bullying and harassment policy as a result of which he was

issued with a first written warning with a one year shelf-life from 18 June 2009. The claimant chose not to appeal this decision and it was confirmed in a letter dated 15 July 2009 from the human resource officer (HR).

During September 2009 the claimant came to the attention of the Gardai as a result of difficulties in his family life. This resulted in the claimant missing some nine or ten days work. On his return to work HR assured the claimant that his job was safe and advised the claimant not to put himself in the position where this could happen to him again. As a result of these difficulties it was necessary for the claimant to seek legal advice and it is common case that the respondent facilitated the claimant with time off in order to obtain this advice.

The claimant's work pattern involved shift work and some weekend work. As a result of changes to working arrangements to meet customer demands from September 2009 there was no longer a requirement for the claimant to work every third Sunday. He was advised in a memo from the quality assurance manager (QA) that from 28 September 2009 he was to work Saturdays from 8-00am till 4-30pm as and when required.

The claimant was requested to work Saturday 24 October 2009 by his shift manager (SM) on or around 20 October 2009. SM was then on leave for the following week. The claimant's position is that he agreed to this on the proviso that he could leave one hour early the following Saturday a day which he was already expecting to work. The respondent's position is that the only discussion was that the claimant thought he was entitled to one hour for two lunch-breaks and SM told the claimant this would be discussed on SM's return from leave.

On Friday 30 October 2009 the claimant spoke to QA to say that he would be leaving early the following day as agreed with SM. QA told the claimant that SM had left no instruction about this and the claimant was to work the full day and to speak to SM about it the following week. The claimant later had a similar exchange with GM. On Saturday 31 October 2009 the claimant spoke to the acting shift manager and told him that GM had agreed to the claimant leaving one hour early. The claimant duly finished work at 3-30pm in order to attend a meeting with his landlord.

Following SM's return to work on 2 November 2009 an investigation was conducted by the operations manager (OM) on the following four days. A disciplinary hearing was conducted by HR on 9 November 2009 and was attended by OM, the claimant and his union representative. HR was satisfied that the claimant had not received authorisation to leave one hour early on 31 October from SM, QA or GM and had knowingly disregarded a reasonable request from both QA and GM to work the full day on 31 October. The decision of HR was that the claimant be dismissed.

The claimant lodged an appeal against his dismissal and this was heard on 24 November 2009 by the human resource manager. The appeal confirmed the decision to dismiss the claimant.

Determination

It is clear that HR was well aware of the difficulties that the claimant was encountering outside the workplace and which led to his missing almost two weeks from work in September 2009. In those circumstances it is surprising that no-one sought to find out from the claimant if the reason for his request for an early finish was anything to do with those difficulties. Whilst refusal to carry out reasonable and lawful instructions is included in the list of items which can warrant dismissal for

gross misconduct nowhere in the letter of dismissal from HR or the appeal result mention gross misconduct. The Tribunal is satisfied that dismissal was a disproportionate penalty in this case. A sanction of final written warning would have been a more appropriate response. Accordingly, the Tribunal is satisfied that the claimant was unfairly dismissed and deems that an award of €10,000-00 under the Unfair Dismissals Acts, 1977 to 2007 is just and equitable in all thecircumstances.

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

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)