

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE -*Claimant*

CASE NO.  
UD1763/2010

RP2363/2010  
MN1711/2010  
WT789/2010

against  
EMPLOYER -*Respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**  
**ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr L. Tobin  
Ms M. Maher

heard this claim at Dublin on 13th January 2012 and 14th March 2012

### **Representation:**

Claimant: Mr. Jadel Naidoe B.L. instructed by  
FH O'Reilly & Company, Solicitors, The Red Church, North  
Circular Road, Phibsborough, Dublin 7

Respondent: Mr. John Barry, Management Support Services (Ireland) Limited,  
The Courtyard, Hill Street, Dublin 1

### **The determination of the Tribunal was as follows:**

The Tribunal has carefully considered the evidence adduced in the course of the two days of hearing. The claimant came into the respondent company at the age of 14 or 15 and worked with the company for eleven years- working his way up to being a Floor Supervisor under the supervision of his direct line manager (Mr. W).

In early 2010 the Operations Manager, of his own volition, started to conduct an investigation into the clocking patterns of the claimant. He says that he was struck by the excessive amount of manual time editing being conducted on the claimant's records. Quite why the Operations Manager conducted this investigation without informing the direct line manager (Mr. W) was not adequately explained. The claimant's case is simply that the Operations

Manager “had it in” for him.

The claimant was unaware that he was the subject of any covert investigation but had noticed a change in attitude from the Operations Manager and was being told by colleagues that they were being asked questions about the claimant. Against this background the claimant with the encouragement of his line manager (Mr. W) went to the General Manager and made a quasi-complaint of a bullying nature. The claimant did not want this acted upon but simply wanted it noted. The General Manager conceded that it was he who had used the word bullying.

The General Manager ignored the claimant’s request for silence and/or anonymity and went straight to the Operations Manager with the allegation. Then in an interesting turn of events from the General Manager’s point of view, the Operations Manager informed the General Manager of his suspicions regarding the claimant’s tampering with the clocking system. At this point the accused became the accuser.

The Tribunal notes that the General Manager effectively took in charge the investigation and disciplinary process that had now been set in motion.

The allegation against the claimant amounted to a manipulation of the clocking system such that the claimant got paid for hours for which he was not present. Corroborative evidence was in the form of CCTV photographs provided by the Operations Manager of which the Tribunal has had no sight whatsoever. These photo stills purportedly had dates and times and clearly identified the claimant (as per the respondent’s evidence).

It is interesting to note that the claimant’s direct line manager was not included in the investigation and was in fact told not to talk to the claimant about his clocking procedures. It is further worth noting that the issue of clocking had never been the basis of any disciplinary issue with the claimant before 2010. In fact, it seems the claimant had a clean disciplinary record for his eleven years of employment.

Then on the 23<sup>rd</sup> of February 2010 the claimant and Mr. W were called into the General Manager’s office to have the allegations presented to him. The claimant was presented with an “audit trail sheet” together with the photographs and asked to provide an explanation. In submissions counsel for the claimant suggested this meeting amounted to an ambush and the Tribunal would accept that the claimant (who had no idea that he was facing any allegations) was not prepared to deal with such a situation. The Tribunal would go so far as to say that the way in which this meeting was conducted was wholly unreasonable and unfair bearing in mind the fact that the claimant had no representation, no support and lacks the educational tools to deal with a highly stressful situation.

Then the company gave the claimant a week to conduct his own counter-investigation. It seems that in that intervening week the General Manager did not conduct any further investigation himself. There was no attempt to discover the provenance of the photograph stills being relied upon. There was no effort made to reconcile the timings on the various clockings being relied upon and there was no effort to conduct an investigation as to who had access to the clocking system. Indeed, by the end of the second day of the hearing the members of the Tribunal themselves felt that they could have easily obtained access to the clocking system in operation.

At the second meeting the claimant was dismissed for gross misconduct with no entitlement to

appeal.

In taking all the matters presented into account, the Tribunal cannot make any conclusive findings on the issue of whether the claimant was guilty of the wrongdoing with which he was charged. The Tribunal need only be satisfied that the respondent acted reasonably and fairly in its conduct of the matter. In this regard the Tribunal finds that the respondent has failed.

The claimant's claim under the Unfair Dismissals Acts, 1977 to 2007, succeeds and taking into account the fact that the claimant has had some success of being re-employed in the intervening period the Tribunal awards the claimant the sum of €40,000.

The Tribunal also finds that the claimant is entitled to the outstanding sum of €3,225.00 under the Minimum notice and Terms of Employment Acts, 1973 to 2005, being the equivalent of five weeks' gross pay.

The claims under the Redundancy Payments Acts and the Organisation of Working Time Act are dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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