

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE *-claimant*

UD1071/2010
MN1039/2010

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. E. Murray

Members: Mr. P. Casey
Ms. H. Kelleher

Heard this claim at Cork on 23rd August 2011 and 15th of November 2011

Representation

Claimant: In Person

Respondent: Ms. Eileen Hayes, P.J. O'Driscoll & Sons, Solicitors, 41, South Main Street, Bandon Co. Cork.

This application arises from the dismissal of the Claimant by the Respondent from his position as a shop assistant in the Respondent's business.

Respondent's case.

Evidence was given by staff members of the respondent company indicating that a number of complaints were made against the claimant in respect of his conduct and attitude towards his superiors and colleagues. Some of his colleagues accused the claimant of being abusive and felt intimidated by him. Contemporaneously the claimant made a complaint against his immediate supervisor of bullying. The manager of the respondent's shop undertook an investigation and concluded that the complaint made by the claimant did not amount to bullying and was merely a case of miscommunication but that the complaint made against the claimant himself did amount to gross misconduct and it was decided to dismiss the claimant in the circumstances.

Claimant's case.

The claimant denied the allegations that he had engaged in behaviour that could be construed as intimidation or harassment towards any of his colleagues and he alleged that the investigation had been pre-judged and had been conducted in an unfair and biased manner, and that it did not comply with the Respondent's own written procedures and that this rendered the investigation and ultimately his dismissal unfair.

Determination.

The Tribunal has carefully listened to the evidence adduced by all parties in this case. Whereas it is clear that the Respondents were not fully compliant with their own procedures, nonetheless the Tribunal unanimously finds that the conduct of the Claimant as described by several witnesses rendered his continuing employment with the Respondent untenable and justified his dismissal, and the Tribunal are unanimously of the view that the claim under the Unfair Dismissals Acts 1977 and 2007 should fail. Consequently, the claim under the Minimum Notice and Terms of Employment Acts 1973 and 2005 does not arise.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd) _____
(CHAIRMAN)