

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

EMPLOYEE

UD604/2011

WT238/2011

MN642/2011

against

EMPLOYER

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. M. Murphy

Mr. O. Nulty

heard this claim at Monaghan on 16th February 2012

Representation:

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Claimant:

Mr. Alan Wilkie, Wilkie & Flanagan, Solicitors, 8 The Hill, Monaghan, Co Monaghan

Respondent:

Mr Terry Cummins, IBEC, Confederation House, 84-86 Lower Baggot Street, Dublin 2

**Respondent's case**

The respondent is a chicken processing and packing plant. The company has a zero tolerance policy in relation to fighting in the workplace following an incident within the industry whereby an employee of a different company lost his life. According to witnesses for the respondent all employees were well aware of this policy and before the claimant had been dismissed there were others dismissed for fighting. Two other people who had recently been dismissed were on

the night shift, as was the claimant.

The incident which led to the dismissal of the claimant occurred on 13<sup>th</sup> October 2010. The claimant was a supervisor on the loading bay and he asked a general operative to pick up papers from the ground that he (the G.O.) had dropped. The G.O. told the claimant to f—k off and a fracas ensued. According to the statement of the claimant he put his arm around the G.O. “in anger” and the G.O. then struck him in the face. However according to the G.O.’s statement the claimant had struck him behind the ear before he hit the claimant. An investigation was carried out and the respondent decided to dismiss both employees involved in the fracas. The claimant lodged an appeal, had a hearing on 18<sup>th</sup> November 2010 and the decision to dismiss him was upheld. A letter dated 15<sup>th</sup> December 2010 in respect of this decision was issued to the claimant.

### **Claimant’s case**

The claimant began working for the respondent on 22<sup>nd</sup> March 2005 and was subsequently promoted to supervisor in 2010.

The representative for the claimant put it to the claimant that he was never given terms and conditions of employment and that he was not aware of grievance procedures. The claimant replied “no I didn’t” and “did not know what gross misconduct meant”.

The claimant was then asked if he had ever attended a union meeting where zero tolerance was mentioned and he said no, he worked the night shift.

The claimant stated that, despite his statement to the respondent to the contrary, he had not put his arm around the G.O. in anger but that this was something that was often done in his country and that Irish people also sometimes did this. He also denied striking the G.O. and did not know where the alleged mark on the back of his head/ear came from. It was also pointed out that the G.O. told one manager that the claimant had punched him in the ear, another that it was in the back of the head and yet another that he could not recall hitting the claimant.

There was a bad relationship between the claimant and the G.O. prior to the incident on 13<sup>th</sup> October 2010. The claimant was asked what his understanding of fighting in work was and he replied “I worked in Cootehill when a man was killed and I understand the seriousness of fighting. I protect myself against fighting. I know it is bad”.

### **Determination**

Having carefully considered the evidence adduced the Tribunal is satisfied that the procedures used by the respondent were fair. Therefore, the Tribunal looked at the proportionality of the censure on the claimant and his dismissal. The physical nature of the incident was instigated by the claimant and the other party’s response could be deemed to be a reaction to that action.

In the circumstances and because of the zero tolerance policy in relation to fighting in the employment the Tribunal must find that the action taken by the respondent was reasonable and

therefore the dismissal was not unfair and the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

The claimant was summarily dismissed for gross misconduct and as such has no entitlement to notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and therefore that claim fails.

No evidence was adduced in relation to the claim under the Organisation of Working Time Act, 1997 and therefore that claim fails for want of prosecution.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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