

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

MN2271/2010

- *Claimant*

against

EMPLOYER

- *Respondent*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Smith

Members: Mr. P. Pierson
Mr. O. Nulty

heard this claim at Cavan on 3 April 2012

Representation:

Claimant: Padraig Murphy, Solicitor, 54, South William Street, Dublin 2

Respondent: In Person

The decision of the Tribunal was as follows:-

Background:

The claimant was employed commenced employment with the respondent company on 3rd June 2008. He was a good employee and got on well with his co-workers and employers. In March 2010 the claimant had an incident in his personal life when he was arrested for assaulting a person. The respondent felt his attitude changed. After this time he had a number of absences, unexplained late arrivals to work and warnings given of which the respondent listed to the Tribunal. These were as follows:

<i>Monday 24th May –</i>	<i>Leg Injury (Sick Note received 18th October)</i>
<i>Monday 31st May –</i>	<i>Leg Injury (Sick Note received 18th October)</i>
<i>Tuesday 1st to Friday 4th June -</i>	<i>Leg Injury (Sick Note received 18th October)</i>
<i>Monday 21st June -</i>	<i>Back Pain (Sick Note received 18th October)</i>
<i>Tuesday 29th June -</i>	<i>Late Arrival (8.08) Claimant was spoken</i>

to regarding his attendance and time keeping.

<i>Thursday 1st July -</i>	<i>Late Arrival (14.09) (Official Warning 1)</i>
<i>Tuesday 6th July -</i>	<i>Unauthorised Leave (Worked 06.57 to 07.56 and left premises without permission.</i>
<i>Wednesday 7th July -</i>	<i>Unauthorised Leave</i>
<i>Thursday 8th July -</i>	<i>Official Warning 2</i>
<i>Tuesday 13th to Monday 19th July -</i>	<i>Sick – Sick Note</i>
<i>Friday 6th September -</i>	<i>Claimant claims to have an accident at work hurting his back; he does not report the accident. He then attends work on Monday 16th September still no mention of the alleged accident. The first we knew of this is on the 29th October when Claimant came to the office with an accident form.`</i>

Monday 16th August to Tuesday September – Sick (Sick Pain)”

He returned to work on 22nd September and worked until 1st October. He did not show up for work and there was no contact from him. A letter of termination was posted to the claimant on Wednesday 6th October. A letter was received from the claimant on Friday 8th October stating he had been arrested on Sunday 3rd October and his phone had been taken off him so he could not contact the respondent. He was released on Monday 4th October. The claimant took claims to the Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007, the Terms of Employment Act (Information) Act 1994 to 2001 and the Organisation of Working Time Act, 1997 which were heard on 15th March 2011. He was successful in the claims under the Unfair Dismissals Acts, 1977 to 2007 and the Terms of Employment Act (Information) Act 1994 to 2001.

Claimant’s Case:

The claimant gave evidence. He told the Tribunal that he had been arrested on 3rd October and his phone had been taken off him and therefore could not contact the respondent to inform him what had occurred. He said that he had not received the letter of termination from the respondent but had returned to work where the respondent shouted at him, told him he could not trust him. He replied that it was not his fault and the respondent told him he was fired.

On cross-examination he said he had arrived late on 29th June but had contacted the respondent to inform him. In respect of his early leaving on 6th July he said that he had informed the respondent that he had a problem with his leg who told him to go home. He could not recall receiving any warnings. When put to him that at the Rights Commissioners hearing the issue of three warnings given were raised his representative stated they were in dispute. The Vice Chairperson read out an abstract of the Rights Commissioner recommendation which stated *“He ignored several warnings that he acknowledged and was aware that he was risking being dismissed.”*

When asked he said that if he was late he would contact his boss to inform him. He told the Tribunal that he had not received the letter of termination from the respondent dated 6th October 2010.

Respondent's Case:

The respondent gave evidence. He stated he no previous problems with the claimant until 2010. He explained that the incident the claimant had in March 2010 had not taken place on the companies premises. He told the Tribunal that he understood the claimant had pressuring issues.

On cross-examination he said he had not sent the claimant to the company doctor after he had informed him he had an injury on the premises but had no problem with the period of sick leave. He told the Tribunal that he could not understand why the claimant had come to the company premises on 8th October to ask why he was dismissed if he had received the letter of termination dated 6th October 2010. He explained to the Tribunal that the claimant had only been successful in his claims under the Unfair Dismissals Acts, 1977 to 2007, the Terms of Employment Act (Information) Act 1994 to 2001 due to procedural issues.

Determination:

The Tribunal have carefully considered the sworn and documentary evidence submitted in the case. The Tribunal finds the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails in this case.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)