

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE - **Claimant**

UD612/2011  
MN655/2011

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: Ms F. Crawford BL

Members: Mr P. Pierce  
Mr A. Butler

heard these claims at Dublin on 18 September 2012

#### **Representation:**

Claimant:

In person

Respondents:

Mr Tiernan Lowey BL instructed by Ms Denise Fry,  
DAS Legal Group, Europa House, Harcourt Centre,  
Harcourt Street, Dublin 2

The determination of the Tribunal was as follows:

The claimant was employed in the respondent's local supermarket from February 2004. In the summer of 2010 the claimant sought to take a holiday in his native Pakistan. As there was another staff member on holiday at the same time the store manager (SM) refused the claimant permission to take the holiday. As a result the claimant approached the managing director (MD) of the respondent and the claimant was then allowed to take holidays from 6 August 2010. The claimant paid the deposit on his flight tickets on 21 July 2010. The respondent's position was that the claimant was to return to work on Monday 23 August 2010; whereas the claimant's position was that he was due to return to work on Wednesday 25 August 2010.

In August 2010 there were very serious floods in the part of Pakistan where the claimant was staying and he was unable to get to Lahore airport to catch his flight home. On 24 August 2010 the claimant telephoned the supermarket and spoke to a colleague and told the colleague that he had

been delayed in Pakistan. The following day the claimant spoke on the phone to SM and explained to her that he did not know when he'd be able to get a flight out of Pakistan. It was the claimant's position that during this conversation SM told the claimant that there was no longer a job for him with the respondent.

The claimant arranged to return to Ireland with a different airline from that which he had originally been booked with as this arrangement got him back to Ireland sooner than waiting for his original carrier. He returned to Ireland on Friday 27 August 2010 and arranged by text to return to the supermarket on Monday 30 August 2010.

The claimant met MD and SM on 30 August 2010 and was suspended after being unable to provide MD with copies of his original booking to return to Ireland. The claimant was given until 3 September 2010 to produce the information. On 3 September 2010 the claimant was given a further extension until 6 September 2010 to produce the information.

On 7 September 2010 MD and SM again met the claimant who was still unable to produce details of his original booking. The claimant's position was that the documents in question had been left in Pakistan and his brother was to post them to him. The claimant was dismissed with immediate effect for failure to produce the travel documents. The respondent's position was that MD could no longer trust the claimant over his failure to return to work on the agreed date.

**Determination:**

At the Tribunal hearing the claimant was able to produce documents which show that his booked date of return to Ireland was on 24 August 2010 thus still leaving a dispute between the parties as to when it had been agreed for the claimant to return to work. During the hearing a contract of employment purporting to have been signed by the claimant was produced by the respondent. The claimant, whilst accepting that the contract applied to him, insisted that it was not his signature on the document. When the original document was tendered it revealed an area which had been tippexed over just above the claimant's purported signature. Whilst the contents of this contract were not germane to the outcome of this case its provenance certainly is. When justifying the dismissal the respondent sought to rely on an incident two years earlier when the claimant allegedly was two weeks late in return from holiday. There are no records of this incident and it was never put to the claimant in cross-examination. Leaving aside the question of when the claimant was due to return to work the Tribunal is in no doubt that the sanction of dismissal for late return from holiday in the circumstances in which the claimant became caught up represents a disproportionate penalty. For all these reasons the Tribunal is satisfied that the dismissal was unfair and awards €4,500-00 under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal further awards €2,352-00, being four weeks' pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)